

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 567-7-8
RETURNS AND COLLECTIONS**

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Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.12.

560-7-8-.45 Film Tax Credit

(1) **Purpose.** This rule provides guidance concerning the implementation and administration of the income tax credits contained within the Georgia Entertainment Industry Investment Act (hereinafter “Act”) under O.C.G.A. § 48-7-40.26.

(2) **Coordination of Agencies.** The Department of Economic Development is the state agency responsible for determining which projects qualify for the tax credits authorized under the Act and specifying which projects were approved as interactive entertainment projects.

(3) **Definitions.**

(a) “Completion of the Base Investment or Excess Base Investment in this State” means the date the production company has finished qualified production activities and incurs no additional qualified production expenditures.

(b) “Film Tax Credit” means the credit allowed pursuant to the Georgia Entertainment Industry Investment Act, O.C.G.A. § 48-7-40.26.

(c) As used in this regulation, the terms “affiliates”, “base investment”, “game platform”, “game sequel”, “multimarket commercial distribution”, “prereleased interactive game”, “production company”, “qualified Georgia promotion”, “qualified production activities”, “state certified production”, and “total aggregate payroll” have the same meaning as in O.C.G.A. § 48-7-40.26.

(d) “Loan-out Company” means any personal service company contracted with and retained by the production company or qualified interactive entertainment production company to provide individual personnel (which are not employees of the production company or qualified interactive entertainment production company), such as artists, actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, or similar personnel for the performance of services used directly in a qualified production activity, but not

including persons retained by the production company or qualified interactive entertainment production company to provide tangible property or outside independent contractor service, such as catering, construction, trailers, equipment and transportation.

(e) “Personal Service Company” means any personal service corporation as defined in Internal Revenue Code Section 269A(b) or any other entity, which also includes a sole proprietorship or an individual being paid as an independent contractor, meeting the principal activity and the ownership requirements of Internal Revenue Code Section 269A(b).

(f) “Qualified Interactive Entertainment Production Company” means a company that:

1. Maintains a business location physically located in Georgia;
2. In the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company, had a total aggregate payroll of \$500,000 or more for employees working within the state; or in a taxable year beginning on or after January 1, 2018, had a total aggregate payroll of \$250,000 or more for employees working within the state in the taxable year the qualified interactive entertainment production company claims the film tax credit;
3. Has gross income less than \$100 million for the taxable year; and
4. Is primarily engaged in qualified production activities related to interactive entertainment which have been approved by the Department of Economic Development.

Any company that has gross income less than \$100 million for the taxable year and is primarily engaged in qualified production activities related to interactive entertainment must meet the requirements in subparagraphs (3)(f)1. and (3)(f)2. of this regulation and be certified as meeting such as provided in subparagraph (5)(c) of this regulation in order to be eligible for the film tax credit.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state. For this definition, “primarily

engaged” means a company whose gross income from qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development exceeds 50% of their total gross income for their taxable year or whose expenses from qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development exceeds 50% of their total expenses for their taxable year.

(4) Affiliates.

(a) **Threshold Determination.** O.C.G.A. § 48-7-40.26(c) and (d) discuss the investment of a production company or qualified interactive entertainment production company and its affiliates. The affiliates are included solely to determine whether or not the \$30 million expenditure threshold has been exceeded for the purpose of determining under which of these subsections the film tax credit will be calculated. Once that determination is made, the \$500,000 base investment threshold or excess base investment threshold is calculated for each separate production company or qualified interactive entertainment production company and the film tax credit is earned solely by the production company or qualified interactive entertainment production company which has qualified investment expenditures in a state certified production. If more than one affiliated production company or qualified interactive entertainment production company has qualifying productions in Georgia, then each production company or qualified interactive entertainment production company will calculate its film tax credit independently of its affiliates.

(b) **Assignment of Credit to Affiliates.** Once the production company or qualified interactive entertainment production company establishes the amount of the film tax credit by filing the tax return for the taxable year in which the credit was earned, the credit may then be assigned to the production company’s or qualified interactive entertainment production company’s affiliates under the provisions of O.C.G.A. § 48-7-42. When a film tax credit is assigned to an affiliated entity, the affiliated entity may apply the credit solely against its own income tax liability. The affiliated entity may not sell or transfer the credit pursuant to paragraph (13) of this regulation and may not claim any excess film tax credit against its withholding tax. Any unused credit may be carried forward by such affiliated entity until the credit is used or it expires, whichever occurs first.

(5) Certification of Qualified Production Activities. Prior to claiming the film tax credit (which includes the additional tax credit for including the qualified Georgia promotion), each new film, video, or digital project must be certified by the Department of Economic Development. Production companies that are required to reduce their investment basis by the amount of

expenditures in prior years, must receive certification from the Department of Economic Development for current year projects prior to claiming the film tax credit. The Department of Economic Development will provide a Credit Certificate Number to the production company or qualified interactive entertainment production company for each qualifying project which is approved. The credit certificate number(s) will be used to report any transfer or sale of film tax credit by the production company or qualified interactive entertainment production company for the qualifying project(s).

(a) The Department of Economic Development shall electronically certify to the Department when the requirements for the additional tax credit for a qualified Georgia promotion have been met.

(b) The additional 10% tax credit for including a qualified Georgia promotion shall not be issued final certification by the Department under paragraph (19) of this regulation unless and until the state certificated production has been commercially distributed in multiple markets within five years of the date that the project was first certified by the Department of Economic Development. As such the additional 10% tax credit for including a qualified Georgia promotion will likely be issued final certification separately and later than the 20% base credit and therefore may be earned later and have a different carryover period.

(c) Certification for a Qualified Interactive Entertainment Production Company. Before the Department of Economic Development issues its certification under paragraph (5) of this regulation to a qualified interactive entertainment production company, the qualified interactive entertainment production company must electronically certify to the Department of Revenue through the Georgia Tax Center on Form IT-QIEPC that:

1. The qualified interactive entertainment production company maintains a business location physically located in this state; and

2. For taxable years beginning before January 1, 2018, the qualified interactive entertainment production company had expended a total aggregate payroll of \$500,000 or more for employees working within this state during the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company. For taxable years beginning on or

after January 1, 2018, the qualified interactive entertainment production company had expended or intends to expend a total aggregate payroll of \$250,000 or more for employees working within this state during the taxable year the qualified interactive entertainment production company claims the tax credit.

(d) The qualified interactive entertainment production company must attach the approved Form IT-QIEPC to their Department of Economic Development certification application. The Department of Economic Development shall not issue its certification until it receives an approved Form IT-QIEPC from the qualified interactive entertainment production company. The Department of Revenue shall not issue any Form IT-QIEPCs before July 1, 2014.

(e) If the qualified interactive entertainment project spans more than 1 year, then the qualified interactive entertainment production company must submit a separate Form IT-QIEPC for each year. Also, any qualified expenditures, including reshoots after the principal photography or additional photography, any of which occur outside of the taxable year on the Department of Economic Development's certificate for the project, require a separate certification from the Department of Economic Development.

(f) If the qualified interactive entertainment production company is a disregarded entity then Form IT-QIEPC should be submitted in the name of the owner of the disregarded entity.

(6) Production Expenditures.

(a) Base Investment. For taxable years beginning before January 1, 2018, a production company or qualified interactive entertainment production company can aggregate projects over a single tax year to meet the \$500,000 investment threshold or excess base investment threshold. For taxable years beginning on or after January 1, 2018, a production company can aggregate projects over a single tax year to meet the \$500,000 investment threshold or excess base investment threshold and a qualified interactive entertainment production company can aggregate projects over a single tax year to meet the \$250,000 investment or excess base investment threshold. A television series (which can occur over two or more years), series pilot, or television movie shall each be considered a single television project. In the case of an episodic television series, an entire season of episodes is one project.

1. Example 1: A production company produces 20 commercials in one calendar year, and each

commercial has \$25,000 in production expenditures. The production company can aggregate their production expenditures for multiple commercials in one calendar year ($20 \times \$25,000 = \$500,000$) to meet the \$500,000 base investment threshold.

2. Example 2: A production company has \$900,000 in production expenditures during two years (they spend \$300,000 in year 1 and \$600,000 in year 2) producing one television movie. The production company may aggregate their production expenditures over the two years for this single project (one television movie) to achieve the \$500,000 base investment threshold. The production company can claim the credit in the year the \$500,000 base investment has been achieved.

3. Example 3: For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company completes two certified projects in one tax year, and each has \$125,000 in production expenditures. The qualified interactive entertainment production company can aggregate their production expenditures for multiple projects completed in one tax year to meet the \$250,000 base investment threshold for a qualified interactive entertainment production company.

4. Example 4: In a taxable year beginning on or after January 1, 2018, a qualified interactive entertainment production company has \$400,000 in production expenditures during two years (they spend \$100,000 in year 1 and \$300,000 in year 2) completing one certified project. The qualified interactive entertainment production company may aggregate their production expenditures over the two years for this single project to achieve the \$250,000 base investment threshold. The qualified interactive entertainment production company can claim the credit in the year the \$250,000 base investment has been achieved.

(b) Direct use. A production company or qualified interactive entertainment production company may only claim production expenditures that are directly used in a qualified production activity. In determining whether an expenditure is directly used in a qualified production activity, the Department of Revenue will consider the proximity of the expenditure to the activity as well as the causal relationship between the expenditure and the activity.

(c) Production expenditures include preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity,

including, but not limited to, the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization; expenditures (excluding license fees) incurred with Georgia companies for sound recordings and musical compositions; sound recording projects used in feature films, series, pilots, or movies; lighting and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing; film processing; transfers of film to tape or digital format; sound mixing; computer graphics services; special effects services; animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company, airfare is generally limited to one roundtrip per production cycle and for this purpose a production cycle is defined as a single episode for television and as a run of show for all other productions; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term also includes payments to a loan-out company by a production company or its payroll service provider or by a qualified interactive entertainment production company or its payroll service provider that has met its withholding tax obligations in subparagraph (6)(d) of this regulation. The production company's tax basis (accrual or cash) shall be used to determine when the payment is made; provided however, prepayments for goods and services qualify in the tax year the payment applies to (the year the goods are delivered or the year the services are rendered), not the year it is prepaid. Also, any qualified expenditures, including reshoots after the principal photography or additional photography, any of which occur outside of the taxable year on the Department of Economic Development's certificate for the project, require a separate certification from the Department of Economic Development. With the exception of assets subject to depreciation under paragraph (6)(e) of this regulation, receipts for asset sales, rebates, insurance proceeds, federal government reimbursements or credits, or any other reimbursements, reduce the amount of qualified expenditures and are required to be reflected in the production cost journal.

1. This term shall not include:

(i) Postproduction expenditures for footage shot outside of Georgia, marketing, publicity, story rights, or distribution;

(ii) Any expenditure for work or services not conducted or rendered in Georgia. Expenditures for services not performed at the filming site shall only qualify if the vendor is a Georgia vendor. Expenditures for services conducted or rendered both in Georgia and outside Georgia shall only

qualify to the extent the service is conducted or rendered in Georgia;

(iii) Expenditures for goods that were not purchased or rented or leased in this state from a Georgia vendor. Goods are not considered purchased or rented in Georgia if the goods are shipped or delivered from the Georgia vendor's location outside of Georgia unless more than a de minimis amount of the type of goods held and shipped or delivered from outside Georgia are normally held in inventory in the ordinary course of business in Georgia by the Georgia vendor. Expenditures for goods shall only qualify to the extent such goods are used in Georgia. A vendor that acts as a conduit to enable purchases or rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases, rentals, or leases;

(iv) Freight or shipping charges incurred relating to a non-Georgia vendor; or

(v) Any transaction subject to taxation under Chapter 8 or Chapter 13 of Title 48 of the Official Code of Georgia for which taxes have not been demonstrably paid. For purposes of Chapter 8, use tax paid by the production company itself will be considered to have been demonstrably paid for purposes of this subparagraph provided the other requirements of O.G.C.A § 48-7-40.26 and this regulation are met.

(d) The production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider shall withhold Georgia income tax at the rate imposed by subsection (a) of O.G.C.A § 48-7-21 on all payments to loan-out companies for services performed in Georgia. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of Title 48 notwithstanding the exclusion in Code Section 48-7-100(10)(K). The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of Chapter 7 of Title 48, the loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in Chapter 7 of Title 48.

1. Registration. A production company or its payroll service provider or a qualified interactive entertainment production company or its payroll service provider that makes payments to a loan-out company must electronically register with the Department using the Georgia Tax Center to obtain a film withholding account for the production company or qualified interactive entertainment production company. The loan-out company must register for a payroll withholding account using the Georgia Tax Center if they are not already registered. The loan-out company must provide the production company or its payroll service provider or the qualified interactive entertainment production company or its payroll service provider the loan-out company's federal identification number and Georgia withholding identification number.

2. Withholding Remittance and Filing. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll service provider on behalf of the qualified interactive entertainment production company shall for each calendar quarter use the Georgia Tax Center to: electronically file the Form G-7 Film; provide information regarding the loan-out company (name, identification numbers, and amount of withholding); and provide any other information required by the Commissioner. Additionally, the withholding payment required by this subparagraph (6)(d) must be electronically remitted using ACH debit or ACH credit in the same manner provided in Rule 560-3-2-.26. The due date for such filing and remittance shall be the last day of the month following the calendar quarter in which the withholding payments were required to be made.

3. Reporting Requirements. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll service provider on behalf of the qualified interactive entertainment production company shall complete Form G2-FP, which requires: the production company's or qualified interactive entertainment production company's name, address, and tax identification numbers; the loan-out company's name, address and tax identification numbers; the amount of tax paid and withheld by the production company or its payroll service provider or by the qualified interactive entertainment production company or its payroll service provider; the total amount paid by the production company or its payroll service provider or by the qualified interactive entertainment production company or its payroll service provider to the loan-out company for services performed in Georgia (before considering the withholding); and any other information required by the Commissioner. Listing the date(s) of the withholding payments remitted to the Department on the Form G2-FP shall be optional. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll

service provider on behalf of the qualified interactive entertainment production company must provide Form G2-FP to the loan-out company by January 31st of the year following the calendar year in which the withholding payments were made. Such G2-FP shall not be submitted to the Commissioner, except upon request.

(i) The loan-out company shall complete Form G2-FL, which requires: the loan out company's name, address, and identification numbers; the allocated amount withheld (see subparagraph (6)(d)5.); the employee's name, address, and tax identification number; the name and identification numbers of the production company or qualified interactive entertainment production company that paid the withholding; and any other information required by the Commissioner. The loan-out company must provide Form G2-FL to the employee allocated the withholding amount by February 28th of the year following the calendar year in which the withholding payments were made. The loan-out company must also electronically file a copy of Form G-1003 and Form G2-FL by February 28th of the year following the calendar year in which the withholding payments were made.

4. Loan-out Filing Requirements. Upon completion of its tax year during which the loan-out company's employees performed services in Georgia, the loan-out company must file a Georgia income tax return (and net worth tax return if applicable) and report its income. The loan-out company must also pay its tax liability as would normally be required.

5. Allocation of Personal Income Credit Against Taxes. The amount deducted and withheld as tax under this subparagraph (6)(d) shall be allowed as a credit to the employee whose services were provided in the certified project against the employee's income tax. If the services of multiple employees are provided by the loan-out company, the amount deducted and withheld under this subparagraph (6)(d) shall be allocated to each employee based on the payments made to the loan-out company's employees performing services in Georgia.

(i) Employee Filing Responsibility. The employee providing services must file a Georgia income tax return attaching Form G2-FL₂ provided by the loan-out company, and apply the credit for the withholding tax allocated to the employee against the calculated individual income tax liability for that employee.

6. Penalties and interest shall be imposed in the same manner as provided by Rule 560-7-8-.33. If the production company does not timely remit the loan out withholding for the calendar withholding quarters included in the taxable year specified on the Department of Economic Development certification, then the expenditure(s) does not qualify for the film tax credit, unless the Department determines there was reasonable cause for such delay; provided, however, the mere failure to withhold and remit the required loan out withholding would not by itself be considered reasonable cause. For example, the production period is October and November of 2020. The calendar withholding quarter runs from October through December of 2020. All amounts must be remitted no later than the January 31, 2021 due date for such quarter in order for the payment(s) to the loan out to qualify.

7. Amounts paid to a loan-out company where the loan-out company is not providing services used in a qualified production activity are not subject to the withholding required by O.C.G.A. § 48-7-40.26.

8. The failure of the loan-out company or the loan-out company's employees to comply with any registration, filing, and reporting obligations imposed by Georgia law, including those imposed by O.C.G.A. § 48-7-40.26 and this rule, shall not affect the film tax credit claimed by the production company or qualified interactive entertainment production company.

(e) Depreciation, amortization, or other expense on production expenditures with a useful life of more than one year. The costs of production expenditures with a useful life of more than one year are considered "other direct costs of producing the project in accordance with generally accepted entertainment industry practices." Such costs shall be included in the computation of the film tax credit for the taxable year based upon the depreciation, amortization, or other expense included in the computation of Georgia taxable income of the production company or qualified interactive entertainment production company for the applicable taxable year. Such depreciation, amortization, or other expense shall be prorated based upon the time the asset is used in qualified production activities in this state. Depreciation, amortization, or other expense on expenditures incurred before the pre-production period shall not be included in the computation of the Film Tax Credit in this state. In order to claim depreciation, amortization, or other expense, the expenditure for the asset that generated the depreciation, amortization, or other expense, must have been incurred in this State as provided in subparagraph (6)(f) of this regulation.

(f) Production expenditures incurred in this state. In order to be considered to have been

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incurred in this state, the following rules shall apply:

1. Production expenditures, which are attributable to the performance of services by individuals and companies directly at the filming site in Georgia who were not employees of the production company or qualified interactive entertainment production company, shall be attributed to Georgia in the same manner as salaries as provided in subparagraph (6)(g) of this regulation.

2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the filming site (such as insurance, service fees paid to a payroll company including workers compensation if the service fees include such, editing and related services, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, etc.) will be allowed if the vendor is a Georgia vendor and will be attributed to Georgia if and only to the extent the service is rendered in Georgia. If the production company or qualified interactive entertainment production company is unable to track the cost of the services rendered in Georgia, then some other reasonable method which approximates the cost of the services rendered in Georgia may be used to determine the amount attributable to Georgia but such approximation will be subject to adjustment by the Department. In the event the services are subcontracted to a company that would not otherwise qualify and/or such subcontracted company renders the services outside Georgia, the expenditure for such services shall not be considered to have been incurred in this state.

3. Purchases and rentals of property. In order to include production expenditures for purchases and rentals of property, the property must have been used in Georgia and purchased or rented from a Georgia vendor. Goods are not considered purchased or rented in Georgia if the goods are shipped or delivered from the Georgia vendor's location outside of Georgia unless more than a de minimis amount of the type of goods held and shipped or delivered from outside of Georgia are normally held in inventory in the ordinary course of business in Georgia by the Georgia vendor. Purchase receipts, invoices, contracts, packing slips, or other documentation shall be used to determine this.

4. Georgia Vendor. For purposes of this rule, a Georgia vendor is a vendor that:

(i) Sells or rents a type of property of which more than a de minimis amount is regularly held

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in their inventory in the ordinary course of business in Georgia, or provides a service not performed at the filming site, which is the subject of the production expenditure, in their ordinary course of business;

(ii) Has a physical location in Georgia with at least one individual working at such location on a regular basis, including home-based businesses that otherwise meet the requirements of a Georgia vendor. Registering with the Georgia Secretary of State or appointing a registered agent in Georgia does not establish a physical location in Georgia.

However, a vendor that acts as a conduit to enable purchases and rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases and rentals;

(iii) Is registered with the Department for collection of sales and use tax when required by Chapter 8 of Title 48;

(iv) Has a local Georgia business license. The production company is required to obtain a copy of the license from any Georgia vendor where the total amount of purchases exceed \$10,000 for such vendor during the taxable year on the Department of Economic Development's certificate for the project; and

(v) For services rendered on set, such persons or vendors providing such services, are identified on the daily production reports or other reasonable evidence that such services were rendered on set is provided;

Failure to provide documentation in this subparagraph when requested will result in the purchases from the vendor being disqualified.

(g) Salaries. Total aggregate payroll, as such term is used in the Act, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employees Form W-2 "Wage and Tax Statement". Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement". For purposes of this rule, the term "employee" means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the

status of an employee. Only amounts included in total aggregate payroll shall be subject to the \$500,000 limit provided in O.C.G.A. § 48-7-40.26(b)(14). Guaranteed payments to partners do not qualify for the film tax credit and are not included in total aggregate payroll. Except as otherwise provided in this paragraph, if the production company or qualified interactive entertainment production company is unable to track the actual time spent by an employee in Georgia, the production company or qualified interactive entertainment production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia but such approximation will be subject to adjustment by the Department. For all individuals who are paid a separate amount for preproduction, for actual production, and for postproduction excluding publicity, the amount that is incurred in Georgia shall be based on the amount paid for each such period and prorated based on the actual time spent in Georgia by the employee in each such period. For purposes of determining the time spent in Georgia for this subparagraph the following shall apply. Travel days are considered a half day. Hold days and other service days that do not begin and end in Georgia are not included in the numerator for purposes of the calculation but are included in the denominator. Prescreening, wardrobe, and free days are included in the numerator if performed in Georgia but in all cases are included in the denominator. Publicity and promotion days do not qualify and must be included in the denominator to the extent the services are contractually specified in the employment agreement. If the production company or qualified interactive entertainment production company is unable to track the actual time spent by the individual in Georgia, the production company or qualified interactive entertainment production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia for each such period but such approximation will be subject to adjustment by the Department.

(h) Fringe Benefits. The following benefits are attributed to Georgia in the same manner as salaries as provided in subparagraph (6)(g) of this regulation:

1. SUI (state unemployment insurance);
2. FUI (federal unemployment insurance);
3. FICA (employer portion);

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4. Pension and welfare if the amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

5. Health insurance premiums if these amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

(i) Other Fringe Benefits. The following fringe benefits are attributed to Georgia as follows:

1. Meal and incidental allowance per diems, including those not taken on set, as set forth by United States General Services Administration, if incurred in Georgia;

2. Hotel and other overnight living accommodations per diems, as set forth by United States General Services Administration, if incurred in Georgia;

3. Any amounts that exceed the limits in subparagraph (6)(i) only qualify if either included in taxable compensation and if subject to the withholding imposed by subparagraph (6)(d) of this regulation, remitted as required by this regulation or if subject to wage withholding, remitted as required by Title 48.

(j) For services rendered on set, such persons or vendors providing such services, must be identified on the daily production reports or the production company must provide other reasonable evidence that such services were rendered on set.

(k) Production expenditures by a production company shall be subject to any limitations or reductions under paragraphs (17) through (24) of this regulation.

(7) Credit Amount.

(a) Except as provided in paragraph (7)(a)1 of this regulation, a production company or qualified interactive entertainment production company, that meets or exceeds the \$500,000 base investment threshold provided in O.C.G.A. § 48-7-40.26(c) and this regulation, shall be allowed a tax credit of 20 percent of the base investment in this state; and an additional tax credit of 10 percent of the base investment shall be allowed if the qualified production activity includes a qualified Georgia promotion approved by the Georgia Department of Economic Development or an alternative marketing opportunity approved by the Georgia Department of Economic

Development.

1. For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company, that meets or exceeds the \$250,000 base investment threshold provided in O.C.G.A. § 48-7-40.26(c) and this regulation, shall be allowed a tax credit of 20 percent of the base investment in this state; and an additional tax credit of 10 percent of the base investment shall be allowed if the qualified production activity includes a qualified Georgia promotion approved by the Georgia Department of Economic Development or an alternative marketing opportunity approved by the Georgia Department of Economic Development.

(b) Except as provided in paragraph (7)(b)1 of this regulation, a production company or qualified interactive entertainment production company, that meets or exceeds the \$500,000 excess base investment threshold provided in O.C.G.A. § 48-7-40.26(d) and this regulation, shall be allowed a tax credit of 20 percent of the excess base investment; and an additional tax credit of 10 percent of the excess base investment shall be allowed if the qualified production activities includes a qualified Georgia promotion approved by the Georgia Department of Economic Development or an alternative marketing opportunity approved by the Georgia Department of Economic Development.

1. For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company, that meets or exceeds the \$250,000 excess base investment threshold provided in O.C.G.A. § 48-7-40.26(d) and this regulation, shall be allowed a tax credit of 20 percent of the excess base investment in this state; and an additional tax credit of 10 percent of the excess base investment shall be allowed if the qualified production activity includes a qualified Georgia promotion approved by the Georgia Department of Economic Development or an alternative marketing opportunity approved by the Georgia Department of Economic Development.

(c) The base investment and the credit amount allowed under paragraph (7)(a) of this regulation for a production company and the excess base investment and the credit amount allowed under paragraph (7)(b) of this regulation for a production company shall be subject to the limitations of and reductions required by paragraphs (17) through (24) of this regulation.

(8) Credit Amount Limitation for a Qualified Interactive Entertainment Production Company. Except as provided in paragraph (8)(a) of this regulation, a qualified interactive entertainment production company's credit amount shall not exceed the amounts in paragraph (9) of this regulation and for any single tax year shall not exceed the qualified interactive entertainment production company's total aggregate payroll expended to employees working within this state for the calendar year directly preceding the start of the taxable year the qualified interactive entertainment production company claims the film tax credit. Any amount in excess of this credit limit shall not be eligible for carryforward to succeeding years' tax liability, nor shall such excess amount be eligible for use against the qualified interactive entertainment production company's quarterly or monthly payment under O.C.G.A. § 48-7-103, nor shall such excess amount be assigned, sold, or transferred to any other taxpayer.

(a) For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company's credit amount shall not exceed the amounts in paragraph (9) of this regulation and for any single tax year shall not exceed the qualified interactive entertainment production company's total aggregate payroll expended to employees working within this state for the taxable year in which the qualified interactive entertainment production company claims the tax credits. Any amount in excess of this credit limit shall not be eligible for carryforward to succeeding years' tax liability, nor shall such excess amount be eligible for use against the qualified interactive entertainment production company's quarterly or monthly payment under O.C.G.A. § 48-7-103, nor shall such excess amount be assigned, sold, or transferred to any other taxpayer.

(b) For taxable years beginning on or after January 1, 2018, qualified interactive entertainment production companies are eligible for film tax credits for prereleased interactive game production; provided such credits shall not be available for a period that exceeds three years for each such qualified interactive entertainment production company.

(9) Credit Cap for Film Tax Credit for Qualified Interactive Entertainment Production Companies and Affiliates. In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified interactive entertainment production companies exceed the following amounts:

(a) For taxable years beginning on or after January 1, 2013, and before January 1, 2014, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive

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entertainment production companies and their affiliates which are qualified interactive entertainment production companies shall not exceed \$25 million. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed \$5 million for taxable years beginning on or after January 1, 2013 and before January 1, 2014;

(b) For taxable years beginning on or after January 1, 2014, and before January 1, 2015, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified interactive entertainment production companies shall not exceed \$12.5 million. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed \$1.5 million for taxable years beginning on or after January 1, 2014 and before January 1, 2015;

(c) For taxable years beginning on or after January 1, 2015, and before January 1, 2016, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified interactive entertainment production companies shall not exceed \$12.5 million. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed \$1.5 million for taxable years beginning on or after January 1, 2015 and before January 1, 2016;

(d) For taxable years beginning on or after January 1, 2016, and before January 1, 2018, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified interactive entertainment production companies shall not exceed \$12.5 million for each taxable year. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed \$1.5 million for each taxable year beginning on or after January 1, 2016 and before January 1, 2018; and

(e) For taxable years beginning on or after January 1, 2018, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production

companies shall not exceed \$12.5 million for each taxable year. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed \$1.5 million for each taxable year beginning on or after January 1, 2018.

(f) Allocation of Film Tax Credit for Qualified Interactive Entertainment Production Company and Affiliates. For taxable years beginning on or after January 1, 2013 and before January 1, 2016, the Commissioner shall allow the film tax credit for any qualified interactive entertainment production company and affiliates on a first-come, first served basis. The paper filing date or electronic filing date of the qualified interactive entertainment production company's income tax return that claims the film tax credit as provided in paragraph (10) of this regulation shall be used to determine such first-come, first-served basis. At the time the credit is claimed, all qualified interactive entertainment production companies must also send a paper copy of the Form IT-FC "Film Tax Credit" to the address listed on such form. Failure to send such paper copy may cause the qualified interactive entertainment production company to not be allowed the film tax credit.

(g) Income Tax Returns Claiming the Credit on the Day the Aggregate Credit Amount is Reached. For taxable years beginning on or after January 1, 2013 and before January 1, 2016, on the day credit amounts on qualified interactive entertainment production companies' income tax returns, which claim the film tax credit as provided in paragraph (10) of this regulation, are received that exceed the aggregate limits in paragraph (9) of this regulation, then the tax credits shall be allocated among such qualified interactive entertainment production companies on a pro rata basis based upon amounts otherwise allowed by O.C.G.A. § 48-7-40.26 and this regulation. Only credit amounts on income tax returns filed on the day the aggregate limits were exceeded will be allocated on a pro rata basis.

(h) Preapproval for Taxable Years Beginning on or after January 1, 2016. For taxable years beginning on or after January 1, 2016, all qualified interactive entertainment production companies must be preapproved to claim the film tax credit and must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this subparagraph.

1. Application. A qualified interactive entertainment production company seeking preapproval to claim the film tax credit must electronically submit Form IT-QIEPC-AP through the Georgia Tax Center. A qualified interactive entertainment production company that has submitted its Form IT-QIEPC for certification by the Department or that submits Form IT-QIEPC on the same day as

Form IT-QIEPC-AP is submitted may request preapproval from the Department before meeting the requirements of the film tax credit. Such qualified interactive entertainment production company must estimate their credit amounts on Form IT-QIEPC-AP. The amount of tax credit claimed by the qualified interactive entertainment production company on the qualified interactive entertainment production company's applicable Georgia income tax return must be based on the actual film tax credit earned pursuant O.C.G.A. § 48-7-40.26 and this regulation and cannot exceed the amount preapproved. If the qualified interactive entertainment production company is preapproved for an amount that exceeds the amount that is calculated using the actual numbers when the return is filed, the excess preapproved amount cannot be claimed by the qualified interactive entertainment production company nor shall such excess preapproved amount be assigned, sold, or transferred to any other taxpayer.

2. Notification. The Department will notify each qualified interactive entertainment production company of the tax credits preapproved or denied to such qualified interactive entertainment production company.

3. Allocation of Tax Credit. The Commissioner shall allow the film tax credits for qualified interactive entertainment production companies on a first-come, first-served basis. The date the Form IT-QIEPC-AP is electronically submitted shall be used to determine such first-come, first-served basis.

4. Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in subparagraph (9)(d) of this regulation, then the tax credits shall be allocated among the qualified interactive entertainment production companies who submitted Form IT-QIEPC-AP on the day the maximum aggregate limit was exceeded on a pro rata basis based upon amounts otherwise allowed under O.C.G.A. § 48-7-40.26, and this regulation. Only credit amounts on applications received on the day the maximum aggregate limit was exceeded will be allocated on a pro rata basis.

5. Once the credit cap is reached for a calendar year, qualified interactive entertainment production companies who meet the requirements of the film tax credit during such calendar year shall no longer be eligible for a credit under O.C.G.A. § 48-7-40.26. If any Form IT-QIEPC-AP is

received after the calendar year preapproval limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

6. In the event it is determined that the qualified interactive entertainment production company has not met all the requirements of O.C.G.A. § 48-7-40.26 and this regulation, then the amount of credits shall not be preapproved or the preapproved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(10) Production Company or Qualified Interactive Entertainment Production Company Claiming Credit.

(a) **Income Tax.** Except as provided in paragraphs (17) through (24) of this regulation, for a production company or qualified interactive entertainment production company to claim the film tax credit, it must attach Form IT-FC “Film Tax Credit”, the Department of Economic Development credit certification(s), and an approved Form IT-QIEPC-AP, if applicable to its Georgia income tax return for each tax year in which the qualified expenditures were incurred.

(b) **Withholding Tax.** The production company or qualified interactive entertainment production company may claim any excess film tax credit, which has been claimed as provided in subparagraph (10)(a) or paragraph (21), against its withholding tax liability or the withholding tax liability of its payroll service providers provided such withholding tax liability is with respect to the employees of the production company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(b)3. The withholding tax benefit may only be applied against the withholding tax account used by the production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider for payroll purposes. In the event the production company or qualified interactive entertainment production company is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company or against the withholding tax liability of its payroll service providers provided such withholding tax liability is attributable to wages paid by its payroll service provider with respect to the individuals providing services to the single member limited liability company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(b)3. Any production company or qualified interactive entertainment production company that qualifies to

take all or a part of the film tax credit against withholding tax otherwise due the Department of Revenue, must notify the Commissioner, in the manner specified in subparagraph (10)(b)1., below, for any tax year for which they are making an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such company. When this election is made, the excess film tax credit will not pass through to the shareholders, partners, or members of the production company or qualified interactive entertainment production company if the production company or qualified interactive entertainment production company is a pass-through entity.

1. Notice of Intent. To claim any excess film tax credit not used on the income tax return against the production company's or qualified interactive entertainment production company's withholding tax liability, the production company or qualified interactive entertainment production company must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period after the due date of the Georgia income tax return (including extensions). Failure to file this form as provided in this subparagraph will result in disallowance of the withholding tax benefit. Such irrevocable election may only be made one time with respect to each tax year for which the credit is earned for such tax year, for all or part of the excess tax credit remaining at the time of the election. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under paragraph (10)(b)1. of this regulation is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the production company or qualified interactive entertainment production company stating the film tax credit amount which may be applied against withholding and when the production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider may begin to claim the film tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments made by the production company or its payroll service provider or the qualified interactive entertainment production company or its payroll service

provider.

(c) Use of Other Tax Credits. Production companies or qualified interactive entertainment production companies claiming the film tax credit may not claim the job tax credit, headquarters tax credit, or quality jobs tax credit for employees whose wages are used to calculate the film tax credit.

(11) Conditions and Limitations.

(a) A production company or qualified interactive entertainment production company must provide the Department of Revenue with sufficient detail of all qualifying expenditures used to meet the base investment and calculate the film tax credit.

(b) Except as otherwise provided, a taxpayer may utilize the film tax credit only to the extent of the taxpayer's income tax liability in a given tax year.

(c) Except as provided in paragraph (22) of this regulation, any film tax credits that cannot be used against a taxpayer's income tax liability in the year established will be carried forward for the numbers of years authorized under O.C.G.A. § 48-7-40.26.

(d) Film tax credits may not be carried back and applied against a prior year's income tax liability.

(e) Except as provided in paragraphs (17) through (24) of this regulation, any Department of Revenue audit triggered by a production company's or qualified interactive entertainment production company's use or transfer of a film tax credit will require the production company or qualified interactive entertainment production company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the production company or qualified interactive entertainment production company that the audit is a film tax credit audit and thus subject to this clause prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this provision.

(12) Pass-Through Entities. When a production company or qualified interactive entertainment production company generating a film tax credit is a pass-through entity, and has no income tax liability of its own, the film tax credit will pass to its members, shareholders, or partners

based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the production company or qualified interactive entertainment production company that incurred the qualifying expenditures to establish the amount of the film tax credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess film tax credit against their withholding tax liabilities or against the withholding tax liabilities of their payroll service providers. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2014. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2014 tax year.

(13) **Selling or Transferring the Film Tax Credit.** The production company or qualified interactive entertainment production company may sell or transfer in whole or in part any film tax credit, previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax, to another Georgia taxpayer subject to the following conditions:

(a) Each sale or transfer must be for a minimum of 60 percent of the credit amount being sold in each respective sale (i.e., the minimum price for each dollar of credit included in an installment must be at least 60 cents).

(b) The taxpayer may only make a one-time sale or transfer of film tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee and more than one sale date. The sale may occur in a year or years after the film tax credit is earned but must occur before the expiration of the carryforward period of such credit. For example, a production company or qualified interactive entertainment production company earns a \$500,000 credit in year 1. In year 2 the production company or qualified interactive entertainment production company sells \$200,000 of the credit to taxpayer 2 and \$50,000 to taxpayer 3. In year 3 the production company or qualified interactive entertainment production company sells the remaining \$250,000 of the credit to taxpayer 4. However, taxpayer 2, taxpayer 3, and taxpayer 4 are not allowed to resell the credit since the credit can only be sold one-time.

(c) Except as provided in paragraphs (17) through (24) of this regulation, the film tax credit may be transferred before the tax return is filed by the production company or qualified interactive entertainment production company provided the film tax credit has been earned. Preapproval for a qualified interactive entertainment production company by itself does not qualify as earning the credit. For credits subject to paragraphs (17) through (24) of this regulation, the film tax credit may be transferred before the tax return is filed by the production company provided the film tax credit has been finally certified. However, the amount transferred cannot exceed the amount of the credit which will be claimed and not used on the income tax return of the transferor.

(d) The production company or qualified interactive entertainment production company must file Form IT-TRANS “Notice of Tax Credit Transfer” with both the Department of Economic Development and Department of Revenue within 30 days of each transfer or sale of the film tax credit. Form IT-TRANS must be submitted electronically to the Department of Revenue through the Georgia Tax Center or alternatively as provided in subparagraph (13)(d)1. With respect to such production companies and qualified interactive entertainment production companies, the Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. Before submitting Form IT-TRANS, the production company that earned the film tax credit must have reported to the Department of Revenue the information required by paragraph (16) of this regulation or for credits subject to paragraphs (17) through (24) of this regulation, the film tax credit must have been finally certified or the qualified interactive entertainment production company that earned the film tax credit must have received preapproval from the Department of Revenue if required by subparagraph (9)(h) of this regulation. If the production company or qualified interactive entertainment production company is a disregarded entity then Form IT-TRANS should be filed in the name of the owner of the disregarded entity but the certification from the Department of Economic Development and Form IT-FC should be in the name of the disregarded entity. With respect to production companies, the requirements of this subparagraph and subparagraph (13)(d)1. are also applicable to taxable years beginning before January 1, 2016 if the credit is or will be claimed on or after June 1, 2016.

1. The web-based portal on the Georgia Tax Center. The production company or qualified interactive entertainment production company may provide selective information to a representative for the purpose of allowing the representative to submit Form IT-TRANS on their behalf on the Georgia Tax Center outside of a login. The provision of such information shall authorize the representative to submit such Form IT-TRANS. The representative must provide all information required by the web-based portal on the Georgia Tax Center to submit Form IT-

TRANS.

(e) The production company or qualified interactive entertainment production company must provide all required film tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the film tax credit being disallowed until the production company or qualified interactive entertainment production company complies with such requirements.

(f) The carryforward period of the film tax credit for the transferee will be the same as it was for the production company or qualified interactive entertainment production company. Except as provided in paragraph (22) of this regulation, this credit may be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.26 from the end of the tax year in which the qualifying expenditures were incurred. For credits subject to paragraphs (17) through (24) of this regulation, the carryforward period is as provided in paragraph (22). For example, for a credit that has a five-year carryforward: The production company or qualified interactive entertainment production company sells a film tax credit on September 15, 2015. This credit is based on qualifying expenditures from the calendar 2014 tax year. The credit may be claimed by the transferee on the 2014, 2015, 2016, 2017, 2018, or 2019 return and the carryforward period for this credit will expire on December 31, 2019. This carryforward treatment applies regardless of whether it is being claimed by the production company, the qualified interactive entertainment production company, or the transferee.

(g) A transferee shall have only such rights to claim and use the Film Tax Credit that were available to the production company or qualified interactive entertainment production company at the time of the transfer excluding the withholding tax benefit which is not available to the transferee. Thus, a transferee shall not have the right to subsequently transfer such credit since that right has been utilized by the transferor.

(14) How to Sell or Transfer the Tax Credit.

(a) Direct Sale. The production company or qualified interactive entertainment production company may sell or transfer the film tax credit directly to a Georgia taxpayer (or multiple Georgia taxpayers as provided in subparagraph (13)(b) of this rule). A pass-through entity may make an election to sell or transfer the unused film tax credit earned in a taxable year at the entity level. If

the pass-through entity makes the election to sell the film tax credit at the entity level, the credit does not pass through to the shareholders, members, or partners. In all cases, the effect of the sale of the credit on the income of the seller and buyer of the credit will be the same as provided in the Internal Revenue Code.

(b) **Pass-Through Entity.** The production company or qualified interactive entertainment production company may be structured as a pass-through entity. If a pass-through entity does not make an election to sell or transfer the tax credit at the entity level as provided in subparagraph (14)(a) of this rule, the tax credit will pass through to the shareholders, partners or members of the entity based on their year ending profit/loss percentage. The shareholders, members, or partners may then sell their respective film tax credit to a Georgia taxpayer.

(c) **Transferee Pass-Through Entity.** The production company or qualified interactive entertainment production company, or its shareholders, members or partners, may sell or transfer the tax credit to a pass-through entity. The pass-through entity shall elect on behalf of its shareholders, members or partners which year the credit shall be passed through to its shareholders, members or partners (either its tax year in which the income tax year of the production company or qualified interactive entertainment production company, which claims the film tax credit for the project or project(s) associated with the credit being sold, ends; or during any later tax year before the carryforward period associated with the tax credit ends as provided in subparagraph (14)(d) of this rule). If the pass-through entity has no income tax liability of its own, the pass-through entity may then pass the credit through to its shareholders, members, or partners based on the pass-through entity's year ending profit/loss percentage for such elected year. For example, if a calendar year partnership is buying the credit earned by a production company or qualified interactive entertainment production company in the calendar 2014 tax year and elects to use the credit for such year, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2014 tax year in which the credit was established. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the film tax credit.

(d) The credits are available for use by the transferee, provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected pursuant to O.C.G.A. § 48-2-35:

1. In the transferee's tax year in which the income tax year of the production company or

qualified interactive entertainment production company, which claims the film tax credit for the project or project(s) associated with the credit being sold, ends; or

2. During any later tax year before the carryforward period associated with the tax credit ends or the carryforward period under paragraph (22) of this regulation associated with the tax credit ends.

(i) Example: A production company or qualified interactive entertainment production company reaches the \$500,000 base investment threshold and claims the film tax credit in calendar 2014 tax year. There is a five-year carryforward period associated with the credit. The production company or qualified interactive entertainment production company sells the film tax credit to a calendar year Georgia taxpayer in calendar year 2015. The transferee Georgia taxpayer may claim the purchased film tax credit on either their 2014 return (transferee's tax year in which the income tax year of the production company or qualified interactive entertainment production company ends) or their 2015, 2016, 2017, 2018, or 2019 return (during any later tax year before the five-year carryforward period associated with the tax credit ends).

(ii) Example: A production company or qualified interactive entertainment production company reaches the \$500,000 base investment threshold and claims the film tax credit in its fiscal year end June 30, 2014. There is a five-year carryforward period associated with the credit. The production company or qualified interactive entertainment production company sells the film tax credit to a calendar year Georgia taxpayer in calendar year 2015. The transferee Georgia taxpayer may claim the purchased film tax credit on either their 2014 return (transferee's tax year in which the income tax year of the production company or qualified interactive entertainment production company ends) or their 2015, 2016, 2017, 2018, or 2019 return (during any later tax year before the five-year carryforward period associated with the tax credit ends).

(15) Reporting Required for Qualified Interactive Entertainment Production Companies. For taxable years beginning on or after January 1, 2016, the qualified interactive entertainment production company shall electronically report to the Department of Revenue through the Georgia Tax Center on Form IT-QIEPC-RPT the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year as provided in subparagraphs (a) and (b) of this paragraph. Such report shall be filed on the date the qualified

interactive entertainment production company files its Georgia income tax return. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(a) For taxable years beginning on or after January 1, 2016, and before January 1, 2017, the qualified interactive entertainment production company shall report such number for such taxable year and separately for each of the prior two taxable years.

(b) For taxable years beginning on or after January 1, 2017, the qualified interactive entertainment production company shall report such number for each respective taxable year.

(c) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall report yearly to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each qualified interactive entertainment production company. The first report shall be submitted by June 30, 2016, and each year thereafter by June 30.

(16) Reporting Required for Production Companies (not applicable to Qualified Interactive Entertainment Production Companies).

(a) Except with respect to projects subject to paragraphs (17) through (24) of this regulation, with respect to any film tax credit that is or will be claimed on or after June 1, 2016 (as well as credits for taxable years beginning before January 1, 2016 if the credit is or will be claimed on or after June 1, 2016), within 90 days of the completion of the base investment or excess base investment in this state, the production company that earned the film tax credit must electronically report and submit to the Department of Revenue through the Georgia Tax Center the following information:

1. The estimated base investment or excess base investment in this state;
2. The film tax credit percentage amount, either 20 percent or 30 percent;
3. The Department of Economic Development certification number; and

4. A copy of the Department of Economic Development certification.

(b) If the production company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity but the certification from the Department of Economic Development that is attached to such submission should be in the name of the disregarded entity.

(c) If a project spans more than one year and the \$500,000 base investment threshold or excess base investment threshold is not met in the first year, the production company shall only be required to report such information in the year in which the credit will be claimed which is the year the \$500,000 base investment threshold or excess base investment threshold is met. In such case the Department of Economic Development certifications for all years should be submitted through the Georgia Tax Center. The Department of Economic Development certifications should either be submitted together as one file or the additional certification should be submitted using the additional document option.

(17) Mandatory Film Tax Credit Audit. For any project first certified by the Department of Economic Development on or after January 1, 2021 and on or before December 31, 2021, if the total amount of such film tax credit for the project exceeds \$2.5 million, the film tax credit shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for a mandatory film tax credit audit under paragraph (18) of this regulation and the Department issues a final certification(s) of the film tax credit under paragraph (19) of this regulation.

(a) For any project first certified by the Department of Economic Development on or after January 1, 2022 and on or before December 31, 2022, if the total amount of such film tax credit for the project exceeds \$1.25 million, the film tax credit shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for a mandatory film tax credit audit under paragraph (18) of this regulation and the Department issues a final certification(s) of the film tax credit under paragraph (19) of this regulation.

(b) For any project first certified by the Department of Economic Development on or after

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January 1, 2023, the film tax credit shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for a mandatory film tax credit audit under paragraph (18) of this regulation and the Department issues a final certification(s) of the film tax credit under paragraph (19) of this regulation.

(c) Prior to issuing a final certification to projects covered under this paragraph, the Department shall conduct or cause to be conducted an audit of each project by either the Department or an independent third party certified by the Department as an eligible auditor under paragraph (19) of this regulation.

(d) Only projects that meet the requirements of paragraph (17) shall receive a mandatory film tax credit audit. If the production company intends to seek and is qualified for the 10% qualified Georgia promotion credit, such credit amount shall be considered in determining if the project meets the requirements of paragraph (17). If a production company applies for a mandatory film tax credit audit for a project and the Department or an eligible auditor performs an audit and the credit amount is less than the required amount under this paragraph, the project will not receive a final certification but the production company may request that a voluntary audit be completed. If the production company does not apply for a mandatory film tax credit audit for a project that meets the requirements of this paragraph, then the credit will not be allowed to be claimed, assigned, sold, transferred, or utilized in any manner without a mandatory film tax credit audit.

1. Example 1: On February 1, 2021 the Department of Economic Development first certifies a project for the 20% film tax credit and the 10% credit for a qualified Georgia promotion, the project has estimated expenditures of \$10 million. At the completion of the base investment the project has a credit amount of \$3 million (the estimated expenditures of \$10 million equal the expenditures at the completion of the base investment). Therefore, the production company must apply for a mandatory audit for this project as provided in paragraph (18) of this regulation.

2. Example 2: On March 1, 2021 the Department of Economic Development first certifies a project for the 20% film tax credit, the project has \$10 million in estimated expenditures. At the completion of the base investment the project has a credit amount of \$2 million (the estimated expenditures of \$10 million equal the expenditures at the completion of the base investment). This project does not qualify for or require a mandatory film tax credit audit.

3. Example 3: On January 31, 2021, the Department of Economic Development first certifies a

project for the 20% film tax credit, the project has \$10 million in estimated expenditures. At the completion of the base investment the project has a credit amount of \$3 million (the expenditures at the completion of the base investment were \$15 million instead of \$10 million). Therefore, the production company must apply for a mandatory film tax credit audit for this project as provided in paragraph (18) of this regulation.

4. Example 4: On December 20, 2020, the Department of Economic Development first certifies a project for the 20% film tax credit, the project has \$15 million in estimated expenditures. On January 3, 2022 the Department of Economic Development certifies the same project for reshoots. This project does not qualify for or require a mandatory film tax credit audit.

(e) For projects that do not qualify for or require a mandatory film tax credit audit, the production company may request a voluntary film tax credit audit. Voluntary film tax credit audits for projects that do not qualify for or require a mandatory film tax credit audit are accepted based on availability and the procedures established by the Department. Voluntary film tax credit audits are not subject to paragraphs (17) through (24) of this regulation.

(f) If a production company is issued final certification of a tax credit pursuant to paragraphs (17) through (24) of this regulation, such tax credit shall be considered earned in the taxable year in which it is issued final certification.

(18) Application for Mandatory Audit. A production company seeking to claim the film tax credit for projects covered under paragraph (17) of this regulation, must apply for an audit of the film tax credit in the manner provided by the Department within one year from the date of the completion of the state certified production where such date is defined as the date of the completion of principal photography.

(a) The following information shall be submitted with the application or prior to the commencement of the audit required under paragraph (17) of this regulation:

1. A description of the state certified production, along with its certification as a state certified production from the Department of Economic Development;

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2. A detailed accounting of all qualified production activities and the attendant production expenditures included in the base investment for the state certified production;
3. A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;
4. Vendor invoices for goods or services included in the base investment as requested by the Department or the eligible auditor hired to conduct the audit for the state certified production;
5. Contracts for goods or services included in the base investment as requested by the Department or the eligible auditor hired to conduct the audit for the state certified production;
6. An Internal Revenue Service Form W-9 completed and issued by each vendor for which expenditures are included in the base investment as requested by the Department or the eligible auditor hired to conduct the audit for the state certified production. The Department or the eligible auditor shall not request a Form W-9 from any Georgia vendor where the total amount of purchases does not exceed \$10,000 for such vendor during the taxable year on the Department of Economic Development's certificate for the project;
7. Notification of any intent to utilize an auditor other than the Department;
8. A description of the status of the distribution of the state certified production and information related to any qualified Georgia promotion connected with such production;
9. The total amount of the tax credit sought for the state certified production;
10. A statement affirming that the contents of the application are true and correct;
11. Production payroll information (summary of payroll and loan out payments by person, W-2s, 1099s, etc.) issued by the payroll company must be submitted directly by the payroll company to the Department or the eligible auditor;
12. Disclosure of related persons or related members as such terms are defined in O.C.G.A. § 48-7-28.3. Disclosure of the total value of goods and services provided by related parties to the production company for the project as well as a breakdown of all such related party transactions.

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All transactions with related persons or related members must be in accordance with an “arm’s length” standard and a minimum of 3 comparison bids and/or studio rate cards will be requested;

13. Disclosure of contracts, agreements, purchase orders or other financially binding instruments with all related persons or related members as such terms are defined in O.C.G.A. § 48-7-28.3;

14. Fees for the audit or the portion of the audit that will be completed by the Department; and

15. Any other information requested by the Department.

(19) Certification and Decertification of Auditors and Issuing of the Final Certification.

(a) The Department shall provide for certification and decertification of certified public accountants as eligible auditors. For purposes of this regulation, the Department will certify the accounting firm. One or more persons of such accounting firm must meet the requirements of this regulation in order for the accounting firm to be certified. When the audit is submitted to the Department, one of such persons must certify on behalf of the accounting firm that the requirements of O.C.G.A. § 48-7-40.26, this regulation, and procedures developed by the Department were completed or met. To obtain certification as an eligible auditor, an eligible certified public accounting firm shall:

1. Register with the Department and be accepted by the Department on an annual basis;
2. Maintain its registration with the Georgia State Board of Accountancy and provide documentation of such when it registers and when otherwise requested by the Department;
3. Agree to and be capable of completing audits related to O.C.G.A. § 48-7-40.26 in accordance with O.C.G.A. § 48-7-40.26 and this regulation and procedures developed by the Department;
4. Pay the Department a registration fee that the Department shall set in an amount that reflects the expenses incurred by the Department for registration, etc.;

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5. Post and maintain any bond that the Department establishes for each eligible auditor;

6. Successfully complete all training required by the Department and pay any applicable training fees;

7. In order to be an eligible auditor in 2021 and 2022, have at least two years experience in auditing ten productions certified by the Department of Economic Development with a minimum base investment of at least \$5 million for each production; and in order to be an eligible auditor for 2023 and later years, have completed all requirements in O.C.G.A. § 48-7-40.26 and this regulation; provided however, if for 2023 and later years, an auditor has not previously been certified by the Department or does not have at least two years experience in auditing ten productions certified by Department of Economic Development with a minimum base investment of at least \$5 million for each production, such auditor will only be eligible to work on film tax credit audits where the base investment is less than \$5 million until the auditor has completed ten audits; and

8. Have an office in Georgia and, based on hours worked, perform at least 90 percent of the work for the audit in Georgia.

(b) The Department shall decertify an eligible auditor, if such auditor fails to meet the conditions or comply with the provisions of subparagraph (a) of this paragraph.

(c) The Department may decertify an eligible auditor if such auditor fails to complete an audit in accordance with O.C.G.A. § 48-7-40.26 and this regulation.

(d) A certified eligible auditor shall at no cost to the Department:

1. Notify the Department of the commencement of the mandatory film tax credit audit for each audit assigned to it and complete the audit in a timely manner:

2. Submit audit workpapers and supporting documentation in the format required by the Department and provide copies of written correspondence and conversation memos with the production company in the format required by the Department;

3. Submit an affidavit of independence with each audit in the format required by the

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Department;

4. Maintain for a period of seven years after completion of each mandatory film tax credit audit copies of all records pertaining to the mandatory film tax credit audit; and shall make the records available upon request from the Department;

5. Participate in periodic compliance discussion group meetings with eligible auditors and the Department;

6. Participate in administrative proceeding or legal proceedings or inquiries as required regarding the mandatory film tax credit audit;

7. Present and conduct themselves as a credible representative of the Department and the state to maintain the public's trust; and

8. Maintain taxpayer information and confidentiality as set forth in the American Institute of Certified Public Accountant's Code of Professional Conduct.

(e) Each audit shall:

1. Be completed in accordance with O.C.G.A. § 48-7-40.26 and this regulation and procedures developed by the Department;

2. Utilize sampling methods that the Department adopts;

3. Follow guidance published by the Department regarding expenditures incurred with related persons or related members as such terms are defined in O.C.G.A. § 48-7-28.3;

4. Verify each reported expenditure that is included in the audit and identify and exclude each such expenditure that does not fully meet the requirements of O.C.G.A. § 48-7-40.26 and this regulation;

5. Exclude any expenditure:

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(i) Not submitted with the application required under paragraph (18) or with respect to any expenditure required to be submitted when requested by the Department or the eligible auditor, not submitted within 60 days of such request; or

(ii) That was incurred after the application required under paragraph (18) of this regulation was submitted;

6. Not be performed by an eligible accounting entity that is not determined to be independent as provided in the American Institute of Certified Public Accountants Code of Professional Conduct with respect to the production company or any of its related persons or related members as such terms are defined in O.C.G.A. § 48-7-28.3 or as otherwise provided by the Department; and

7. Be submitted to the Department which shall review the audit, make adjustments as necessary, and issue a final certification to the production company.

(f) The Department shall:

1. Publish and regularly update a list of all eligible auditors that the Department will select to conduct the audit required under paragraph (17) of this regulation. The production company may not choose its own auditor;

2. Publish on its website the application to be certified as an eligible auditor as well as all requirements related to certification and conducting an audit under this paragraph. Publish on its website the auditor registration fee and any auditor bond requirements;

3. Prepare periodic training for approving eligible auditors and conduct annual review of certification of eligible auditors;

4. Review protests of disqualified or decertified auditors;

5. Develop standardized work papers for use by the production company and eligible auditors;

6. Develop secure data file transfer protocol for the Department and eligible auditors;

7. Determine whether and when sampling methods shall be used for the audits required under paragraph (17) of this regulation, the appropriate sample method and size, and if a sampling method is used, ensure that it accurately captures a truly representative sample of all ineligible expenditures across all submitted expenditures and projects the type, rate, and amount of ineligible expenditures across all submitted expenditures;

8. Notify the production company through the production company's designee, that the audit was received from the eligible auditor;

9. Perform the audit of expenditures when, due to confidentiality of information, the eligible auditor is unable to access necessary information that the Department is able to access;

10. Review each audit conducted by an eligible auditor, conduct the portions of the audit described in subparagraph (f)9. of this paragraph, perform additional auditing as necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue the final certification of the tax credit to the production company;

11. For an audit it conducts without an eligible auditor, complete the audit, adjust the value of the tax credit as necessary, and issue the final certification of the tax credit to the production company.

12. Issue final list of exceptions to the eligible auditor, if applicable, and the production company's designee; and

13. Review, evaluate, and respond to a protest by the production company.

(20) Reimbursement Costs for Audit. The production company applying for a final certification of the tax credit shall agree and be required to reimburse the Department for all costs incurred by the Department for the performance of a related audit, or any portion thereof, including for review of an audit conducted by an eligible auditor, at the time of application.

(a) The cost of any such audit whether conducted in whole or in part by the Department, an

eligible auditor, or a combination of the two shall be borne by the production company and shall not be included as an expenditure claimed under the film tax credit.

1. The cost of the audit depends on the production company's audit selection of either an audit performed by the Department or an audit performed in part by an eligible auditor selected by the Department. The cost for a mandatory film tax credit audit performed by the Department will be as published on the Department's website. If a portion of the film tax credit audit is performed by an eligible auditor selected by the Department, the Department fees will be reduced. Once the eligible auditor is selected, such auditor shall contract directly with the production company and as such any fees that are paid for services rendered by an eligible auditor are paid directly to such eligible auditor. The Department may at its discretion establish fees that an eligible auditor may charge.

(21) Claiming the film tax credit for projects that receive a final certification. If the production company is issued final certification of the film tax credit under paragraph (19) of this regulation such film tax credit shall be considered earned in the taxable year in which it is issued final certification. For a production company to claim the film tax credit for a project that has received a final certification, the production company must complete the appropriate income tax credit schedule on their Georgia income tax return even if the film tax credit is sold or transferred. No Form IT-FC "Film Tax Credit" is required. The production company may elect to use their excess film tax credit against withholding as provided in subparagraph (10)(b) of this regulation.

(22) Carryforward for projects that receive a final certification. In no event shall the amount of film tax credit for a taxable year exceed the production company's income tax liability. For a project that has been issued a final certification under paragraph (19) of this regulation any unused film tax credit, for the production company or any transferees, shall be allowed to be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.26 from the close of the taxable year in which the film tax credit was issued its final certification. Film tax credits may not be carried back and applied against prior year's income tax liability.

(23) No Recapture for Transferee. The Department shall not recapture the film tax credit from the transferee if the film tax credit was issued a valid final certification under paragraph (19) of this regulation.

(24) Mandatory Film Tax Credit Audit Due Process. The production company must protest

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under O.C.G.A. § 48-2-46 or file an appeal with the tribunal or superior court within 30 days of the issuance of the final certification. If protested under O.C.G.A. § 48-2-46, any final determination can be appealed with the tribunal or superior court.

(25) Not applicable to Qualified Interactive Entertainment Production Companies. Paragraphs (17) through (24) of this regulation shall not apply to qualified interactive entertainment production companies.

(26) Effective Date. This regulation as amended shall become effective on January 1, 2025. Years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.26.

560-7-8-.48 Wood Residuals Tax Credits

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the wood residuals tax credits under O.C.G.A. § 48-7-29.14.

(2) **Coordination of Agencies.** The Georgia Forestry Commission and the Department of Revenue have been designated as the primary agencies responsible within Georgia to administer the program. The Georgia Forestry Commission is the state agency responsible for certifying the dollar amount of wood residuals transported or diverted to a renewable biomass qualified facility.

(3) **Tax Credit for Transporting or Diverting Wood Residuals.** The tax credit under O.C.G.A. § 48-7-29.14(b)(2) is a tax credit against Georgia income tax and shall be granted to a taxpayer who transports or diverts wood residuals to a renewable biomass qualified facility on or after July 1, 2008. The taxpayer eligible to claim this credit shall be the taxpayer that received certification from the Georgia Forestry Commission for transporting or diverting wood residuals.

(a) Certification. Prior to submitting an application for approval (Form IT-WR-AP) to claim

(18) Preapproval Periods.

(a) **Beginning of an Approval or Preapproval Period.** Pursuant to O.C.G.A. § 48-2-39, when the approval or preapproval period (January 1 through December 31) for the qualified rural hospital organization expense tax credit begin on a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed, such beginning dates shall be postponed until the first day following which is not a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed. Preapprovals, which must be requested through the Department's Georgia Tax Center, may be submitted beginning at 8:00AM on such following day.

(b) **First-Come, First-Served Basis.** Any application submitted on a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed, shall be considered to have been submitted on such date and time and shall not be prorated based on the date the application is received. This paragraph shall only apply to an application submitted on a day following the beginning date of the approval or preapproval period as provided by subparagraph (18)(a) of this regulation.

(19) **Sunset Date.** O.C.G.A. § 48-7-29.20, the qualified rural hospital organization expense tax credit, shall be repealed on December 31, 2029.

(20) **Effective Date.** This regulation shall be applicable to years beginning on or after January 1, 2025. Years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12, 48-7-29.20.

560-7-8-.59 Postproduction Film Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the postproduction film tax credit under O.C.G.A. § 48-7-40.26A.

(2) **Definitions.** As used in this regulation, the terms “affiliates”, “multimarket commercial distribution”, “qualified postproduction activities”, “qualified production”, and “total aggregate

payroll” have the same meaning as in O.C.G.A. § 48-7-40.26A.

(a) ”Postproduction Company” means a company that:

1. Maintains a business location physically located in Georgia;
2. Has total aggregate payroll of \$250,000 or more for employees working within the state in the taxable year that the postproduction company claims the postproduction film tax credit; or for a postproduction company that has incurred at least \$100,000 but less than \$500,000 in qualified postproduction expenditures, has a total aggregate payroll of at least \$100,000 but less than \$500,000 for employees working within the state in the taxable year that the postproduction company claims the postproduction film tax credit.
3. Is engaged in qualified postproduction activities; and
4. Has been certified by the Department as provided in paragraph (3) of this regulation.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state. In the instance of a work for hire in which one postproduction company hires another postproduction company to engage in qualified postproduction activities for pay, the hired postproduction company shall be considered a service provider for the hiring postproduction company and the hiring postproduction company shall be entitled to the postproduction film tax credit for postproduction expenditures related to the hired postproduction company only if the Department certifies that the hired postproduction company is a Georgia company employing workers in this state and that the work on the postproduction expenditures is solely in this state. In order to make such certification, the postproduction company must certify on Form IT-PC that the hired postproduction company is a Georgia company employing workers in this state and that the work on the postproduction expenditures is solely in this state. If the Department determines at any time that the certification is not valid, then the Department shall disallow the postproduction expenditures related to the hired postproduction company. In the event that the hiring postproduction company does not qualify for the postproduction film tax credit, because the hiring postproduction company does not meet the

definition of a postproduction company under O.C.G.A. § 48-7-40.26A and this paragraph, then the hired postproduction company would be entitled to the postproduction film tax credit for its qualified postproduction expenditures provided it otherwise qualifies.

(b) "Work for hire" means an arrangement whereby one postproduction company contracts with another postproduction company to engage in qualified postproduction activities pursuant to a production services agreement. Merely financing or providing funding to a postproduction company does not make the financing/funding company the "hiring" postproduction company for purposes of the postproduction film tax credit. In the instance of co-productions, the claiming company must attach a written agreement to Form IT-PFC when the credit is claimed as to which party will be entitled to earn and claim the tax credit. Failure to execute and attach such agreement shall result in the loss of the postproduction film tax credit.

(3) Certification for a Postproduction Company.

(a) The postproduction company must electronically certify on Form IT-PC to the Department of Revenue through the Georgia Tax Center that:

1. The postproduction company maintains a business location physically located in this state; and

2. The postproduction company has expended or intends to expend a total aggregate payroll of \$250,000 or more for employees working within this state in the taxable year that the postproduction company claims the postproduction film tax credit; or if the postproduction company has incurred at least \$100,000 but less than \$500,000 in qualified postproduction expenditures, that the postproduction company has expended or intends to expend a total aggregate of at least \$100,000 but less than \$500,000 for employees working within this state in the taxable year that the postproduction company claims the postproduction film tax credit.

(b) If the postproduction company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity.

(4) Qualified Postproduction Expenditures. Qualified postproduction expenditures include postproduction expenditures incurred in this state that are directly used in qualified postproduction activities, including without limitation the following: costs associated with photography and sound

synchronization, expenditures (excluding license fees) incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct postproduction costs for the project in accordance with generally accepted entertainment industry practices. This term includes postproduction expenditures for footage shot inside or outside of Georgia.

(a) Depreciation, amortization, or other expense on qualified postproduction expenditures with a useful life of more than one year. The costs of qualified postproduction expenditures with a useful life of more than one year are considered “other direct costs of the qualified postproduction activities in accordance with generally accepted entertainment industry practices.” Such costs shall be included in the computation of the postproduction film tax credit for the taxable year based upon the depreciation, amortization, or other expense included in the computation of Georgia taxable income of the postproduction company for the applicable taxable year. Such depreciation, amortization, or other expense shall be prorated based upon the time the asset is used in qualified postproduction activities in this state. Depreciation, amortization, or other expense on expenditures incurred before the postproduction period shall not be included in the computation of the postproduction film tax credit. In order to claim depreciation, amortization, or other expense, the qualified postproduction expenditure for the asset that generated the depreciation, amortization, or other expense, must have been incurred in this state as provided in subparagraph (4)(b) of this regulation.

(b) Qualified postproduction expenditures incurred in this state. In order to be considered to have been incurred in this state, the following rules shall apply:

1. Qualified postproduction expenditures, which are attributable to the performance of services by individuals and companies directly at the postproduction site in Georgia who were not employees of the postproduction company, shall be attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation.

2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the postproduction site (such as insurance, service fees paid to a payroll company including workers compensation if the service fees include such, editing and related services, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, etc.) will be allowed if the vendor is a Georgia vendor and will be attributed to Georgia if and only to the extent the service is rendered in Georgia. If the postproduction company is unable to track the cost of services rendered in Georgia, then some other reasonable method which approximates the cost of services rendered in Georgia may be used to determine the amount attributable to Georgia but such approximation will be subject to adjustment by the Department. In the event the services are subcontracted to a company that would not otherwise qualify and/or such subcontracted company renders the services outside Georgia, the expenditure for such services shall not be considered to have been incurred in this state.

3. Purchases and rentals of property. In order to include qualified postproduction expenditures for purchases and rentals of property, the property must have been used in Georgia and purchased or rented from a Georgia vendor. Purchase receipts, invoices, contracts, or other documentation shall be used to determine this.

4. Georgia Vendor. For purposes of this regulation, a Georgia vendor is a vendor that:

(i) Sells or rents property, which is regularly kept in their inventory, or provides a service not performed at the postproduction site, which is the subject of the qualified postproduction expenditure, in their ordinary course of business; and

(ii) Has a physical location in Georgia with at least one individual working at such location on a regular basis. Registering with the Georgia Secretary of State or appointing a registered agent in Georgia does not establish a physical location in Georgia.

However, a vendor that acts as a conduit to enable purchases and rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases and rentals.

(c) Salaries. Total aggregate payroll, as such term is used in this regulation, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employees

Form W-2 “Wage and Tax Statement”. Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee’s Form W-2 “Wage and Tax Statement”. For purposes of this regulation, the term “employee” means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee. Guaranteed payments to partners do not qualify for the postproduction film tax credit and are not included in total aggregate payroll. Except as otherwise provided in this paragraph, if the postproduction company is unable to track the actual time spent by an employee in Georgia, the postproduction company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia but such approximation will be subject to adjustment by the Department. For all individuals who are paid a separate amount for postproduction, the amount that is incurred in Georgia shall be based on the amount paid for such period and prorated based on the actual time spent in Georgia by the employee in such period. If the postproduction company is unable to track the actual time spent by the individual in Georgia, the postproduction company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia for such period but such approximation will be subject to adjustment by the Department.

(d) Fringe Benefits. The following benefits are attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation:

1. SUI (state unemployment insurance);
2. FUI (federal unemployment insurance);
3. FICA (employer portion);
4. Pension and welfare if the amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);
5. Health insurance premiums if these amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

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(i) Other Fringe Benefits. The following fringe benefits are attributed to Georgia as follows:

1. Meal per diems, as set forth by United States General Services Administration, if incurred in Georgia; and

2. Hotel per diems, as set forth by United States General Services Administration, if incurred in Georgia.

(e) Direct use. A postproduction company may only claim qualified postproduction expenditures that are directly used in a qualified postproduction activity. In determining whether a postproduction expenditure is directly used in a qualified postproduction activity, the Department of Revenue will consider the proximity of the expenditure to the activity as well as the causal relationship between the expenditure and the activity.

(5) **Credit Amount.** Except as provided in paragraph (6) of this regulation, a postproduction company that meets or exceeds \$500,000 in qualified postproduction expenditures in a taxable year as provided in O.C.G.A. § 48-7-40.26A and this regulation, shall be allowed a tax credit of 20 percent of the qualified postproduction expenditures; and an additional tax credit of 10 percent of the qualified postproduction expenditures shall be allowed if the qualified production expenditures under O.C.G.A. § 48-7-40.26 and upon which the qualified postproduction expenditures were incurred, were filmed in this state; an additional 5 percent of the qualified postproduction expenditures shall be allowed if the qualified postproduction expenditures were incurred in a tier 1 or tier 2 county as designated by the Commissioner of Community Affairs under O.C.G.A. § 48-7-40.

(6) **Credit amount for small postproduction companies.** A postproduction company that has incurred at least \$100,000 but less than \$500,000 in qualified postproduction expenditures and has a total aggregate payroll in this state of at least \$100,000 but less than \$500,000 in a taxable year shall be allowed a tax credit of 20 percent of the qualified postproduction expenditures in a taxable year.

(7) **Credit Amount Limitation.** A postproduction company's credit amount shall not exceed the amounts in paragraph (5) or (6) of this regulation, and for any single tax year shall not exceed the postproduction company's total aggregate payroll expended to employees working within this state for the taxable year that the postproduction company claims the postproduction film tax

credit. Any amount in excess of this credit limit shall not be eligible for carryforward to succeeding years' tax liability, nor shall such excess amount be eligible for use against the postproduction company's quarterly or monthly payment under O.C.G.A. § 48-7-103, nor shall such excess amount be assigned, sold, or transferred to any other taxpayer.

(8) Credit Cap (not applicable to small postproduction companies under paragraph (10) of this regulation). For taxable years beginning on or after January 1, 2018 and before January 1, 2023, in no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26A for a postproduction company exceed \$10 million per tax year.

(a) The postproduction film tax credit shall not be available for taxable years beginning on or after January 1, 2023.

(b) If the aggregate amount of tax credits claimed, under paragraph (8) of this regulation, by postproduction companies during a year is less than the aggregate annual cap applicable to such year, the unclaimed portion of the aggregate annual cap shall be added to the aggregate annual cap applicable to the next succeeding year or years until it is fully claimed. Since a postproduction company can apply for preapproval and claim the credit until the end of the three year period provided in O.C.G.A. § 48-2-35, the Department will add the unclaimed portion after such three year period.

1. For example, for the 2018 preapproval year the preapproval and claiming can occur as late as September 15, 2023 (a corporation with a taxable year that begins on December 1, 2018 and ends on November 15, 2019 with an original return due date of September 15, 2020). The Department will add the unclaimed portion to the 2019 preapproval year as soon after that date as practical.

(9) Maximum Credit Amount per Postproduction Company and Its Affiliates which are Postproduction Companies. The maximum credit amount allowed under paragraph (8) of this regulation for any postproduction company and its affiliates which are postproduction companies shall not exceed 20 percent of the aggregate amount of postproduction film tax credits available for such taxable year under paragraph (8) of this regulation.

(10) **Credit Cap for small postproduction companies.** For taxable years beginning on or after January 1, 2018 and before January 1, 2023, in no event shall the aggregate amount of tax credits allowed for postproduction companies that have incurred at least \$100,000 but less than \$500,000 in qualified postproduction expenditures and have a total aggregate payroll in this state of at least \$100,000 but less than \$500,000 in a taxable year, exceed \$1 million per taxable year. The credit cap under this paragraph is separate from and shall not be included in the aggregate credit cap under paragraph (8) of this regulation.

(a) The postproduction film tax credit for small postproduction companies shall not be available for taxable years beginning on or after January 1, 2023.

(11) **Preapproval for Postproduction Companies (not applicable to Small Postproduction Companies under Paragraph (12) of this Regulation).** Any postproduction company seeking preapproval to claim tax credits under paragraph (8) of this regulation, must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this subparagraph.

(a) Application. A postproduction company seeking preapproval to claim the tax credits under paragraph (8) of this regulation must electronically submit Form IT-PC-AP through the Georgia Tax Center. A postproduction company that has submitted its Form IT-PC for certification by the Department or that submits Form IT-PC on the same day as Form IT-PC-AP is submitted may request preapproval from the Department before meeting the requirements of the postproduction film tax credit. Such postproduction company must estimate their credit amounts on Form IT-PC-AP. The amount of tax credit claimed by the postproduction company on the postproduction company's applicable Georgia income tax return must be based on the actual postproduction film tax credit earned under O.C.G.A. § 48-7-40.26A and this regulation and cannot exceed the amount preapproved. If the postproduction company is preapproved for an amount that exceeds the amount that is calculated using the actual numbers when the return is filed, the excess preapproved amount cannot be claimed by the postproduction company nor shall such excess preapproved amount be assigned, sold, or transferred to any other taxpayer or added to the paragraph (8) credit cap. If the postproduction company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity.

(b) Notification. The Department will notify each postproduction company of the tax credits preapproved or denied to such postproduction company.

(c) Allocation of Tax Credit. The Commissioner shall allow the tax credits on a first-come, first-served basis. The date the Form IT-PC-AP is electronically submitted shall be used to determine such first-come, first-served basis.

(d) Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in paragraph (8) of this regulation, then the tax credits shall be allocated among the postproduction companies who submitted Form IT-PC-AP on the day the maximum aggregate limit was exceeded on a pro rata basis based upon amounts otherwise allowed under O.C.G.A. § 48-7-40.26A, and this regulation. Only credit amounts on applications received on the day the aggregate credit cap was exceeded will be allocated on a pro rata basis.

(e) Once the credit cap is reached for a taxable year, postproduction companies who meet the requirements of the postproduction film tax credit during such taxable year shall no longer be eligible for a credit under O.C.G.A. § 48-7-40.26A. If any Form IT-PC-AP is received after the taxable year preapproval limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(f) In the event it is determined that the postproduction company has not met all the requirements of O.C.G.A. § 48-7-40.26A and this regulation, then the amount of credits shall not be preapproved or the preapproved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(12) Preapproval for Small Postproduction Companies. Any postproduction company seeking preapproval to claim tax credits under paragraphs (10) of this regulation, must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this subparagraph.

(a) Application. A postproduction company seeking preapproval to claim the tax credits under paragraph (10) of this regulation must electronically submit Form IT-SPC-AP through the Georgia Tax Center. A postproduction company that has submitted its Form IT-PC for certification by the Department or that submits Form IT-PC on the same day as Form IT-SPC-AP is submitted may request preapproval from the Department before meeting the requirements of the postproduction

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film tax credit. Such postproduction company must estimate their credit amounts on Form IT-SPC-AP. The amount of tax credit claimed by the postproduction company on the postproduction company's applicable Georgia income tax return must be based on the actual postproduction film tax credit earned under O.C.G.A. § 48-7-40.26A and this regulation and cannot exceed the amount preapproved. If the postproduction company is preapproved for an amount that exceeds the amount that is calculated using the actual numbers when the return is filed, the excess preapproved amount cannot be claimed by the postproduction company nor shall such excess preapproved amount be assigned, sold, or transferred to any other taxpayer or added to the paragraph (10) credit cap. If the postproduction company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity.

(b) Notification. The Department will notify each postproduction company of the tax credits preapproved or denied to such postproduction company.

(c) Allocation of Tax Credit. The Commissioner shall allow the tax credits on a first-come, first-served basis. The date the Form IT-SPC-AP is electronically submitted shall be used to determine such first-come, first-served basis.

(d) Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in paragraph (10) of this regulation, then the tax credits shall be allocated among the postproduction companies who submitted Form IT-SPC-AP on the day the maximum aggregate limit was exceeded on a pro rata basis based upon amounts otherwise allowed under O.C.G.A. § 48-7-40.26A, and this regulation. Only credit amounts on applications received on the day the aggregate credit cap was exceeded will be allocated on a pro rata basis.

(e) Once the credit cap is reached for a taxable year, postproduction companies who meet the requirements of the postproduction film tax credit during such taxable year shall no longer be eligible for a credit under O.C.G.A. § 48-7-40.26A. If any Form IT-SPC-AP is received after the taxable year preapproval limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(f) In the event it is determined that the small postproduction company has not met all the requirements of O.C.G.A. § 48-7-40.26A and this regulation, then the amount of credits shall not be preapproved or the preapproved credits shall be retroactively denied. With respect to such

denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(13) Qualified Postproduction Expenditures Not Eligible for the Postproduction Film Tax Credit. Any qualified postproduction expenditures for which a production company claims the tax credit under O.C.G.A. § 48-7-40.26 are not eligible for the postproduction film tax credit under O.C.G.A. § 48-7-40.26A and this regulation.

(14) Claiming the Postproduction Film Tax Credit. A postproduction company claiming tax credits under paragraph (8) or (10) of this regulation must attach Form IT-PFC to its Georgia income tax return for each tax year in which the credit is claimed.

(a) **Withholding Tax.** The postproduction company may claim any excess postproduction film tax credit against its withholding tax liability or the withholding tax liability of its payroll service providers provided such withholding tax liability is with respect to the employees of the postproduction company and is attributable to withholding for such employees for withholding periods approved in subparagraph (14)(a)3. of this regulation. The withholding tax benefit may only be applied against the withholding tax account used by the postproduction company or its payroll service provider for payroll purposes. In the event the postproduction company is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company or against the withholding tax liability of its payroll service providers provided such withholding tax liability is attributable to wages paid by its payroll service provider with respect to the individuals providing services to the single member limited liability company and is attributable to withholding for such employees for withholding periods approved in subparagraph (14)(a)3. of this regulation. Any postproduction company that qualifies to take all or a part of the postproduction film tax credit against withholding tax otherwise due the Department of Revenue, must notify the Commissioner, in the manner specified in subparagraph (14)(b)1., below, for any tax year for which they are making an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such company. When this election is made, the excess postproduction film tax credit will not pass through to the shareholders, partners, or members of the postproduction company if the postproduction company or is a pass-through entity.

1. Notice of Intent. To claim any excess postproduction film tax credit not used on the income tax return against the postproduction company's withholding tax liability, the postproduction company must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period after the due date of the Georgia income tax return (including extensions). Failure to file this form as provided in this subparagraph will result in disallowance of the withholding tax benefit. Such irrevocable election may only be made one time with respect to each tax year for which the credit is earned for such tax year, for all or part of the excess tax credit remaining at the time of the election. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (14)(a)1. of this regulation is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the postproduction company stating the postproduction film tax credit amount which may be applied against withholding and when the postproduction company or its payroll service provider may begin to claim the postproduction film tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments made by the postproduction company or its payroll service provider.

(b) Use of Other Tax Credits. Postproduction companies claiming the postproduction film tax credit may not claim the job tax credit, headquarters tax credit, or quality jobs tax credit for employees whose wages are used to calculate the postproduction film tax credit.

(c) Assignment of Credit to Affiliates. Once the postproduction company establishes the amount of the postproduction film tax credit by filing the tax return for the taxable year in which the credit was earned, the credit may then be assigned to the postproduction company's affiliates under the provisions of O.C.G.A. § 48-7-42. When a postproduction film tax credit is assigned to an affiliated entity, the affiliated entity may apply the credit solely against its own income tax liability. The affiliated entity may not sell or transfer the credit pursuant to paragraph (18) of this regulation and may not claim any excess postproduction film tax credit against its withholding tax.

Any unused credit may be carried forward by such affiliated entity until the credit is used or it expires, whichever occurs first.

(15) **Carryforward.** Any credit that is claimed but not used in a taxable year may be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.26A from the close of the taxable year in which the qualified postproduction expenditures were made and the postproduction company established the amount of the postproduction film tax credit for that taxable year.

(a) Postproduction film tax credits may not be carried back and applied against a prior year's income tax liability.

(16) **Audits.** Any Department of Revenue audit triggered by a postproduction company's use or transfer of a postproduction film tax credit will require the postproduction company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the postproduction company that the audit is a postproduction film tax credit audit and thus subject to this clause prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this provision.

(17) **Pass-Through Entities.** When a postproduction company generating a postproduction film tax credit is a pass-through entity, and has no income tax liability of its own, the postproduction film tax credit will pass to its members, shareholders, or partners based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the postproduction company that incurred the qualifying postproduction expenditures to establish the amount of the postproduction film tax credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess postproduction film tax credit against their withholding tax liabilities or against the withholding tax liabilities of their payroll service providers. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2019. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2019 tax year.

(18) **Selling or Transferring the Postproduction Film Tax Credit.** The postproduction company may sell or transfer in whole or in part any postproduction film tax credit, previously claimed but not used by such postproduction company against its income tax, to another Georgia taxpayer subject to the following conditions:

(a) The taxpayer may only make a one-time sale or transfer of postproduction film tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee and more than one sale date. The sale may occur in a year or years after the postproduction film tax credit is earned but must occur before the expiration of the carryforward period of such credit. For example, a postproduction company earns a \$500,000 credit in year 1. In year 2 the postproduction company sells \$200,000 of the credit to taxpayer 2 and \$50,000 to taxpayer 3. In year 3 the postproduction company sells the remaining \$250,000 of the credit to taxpayer 4. However, taxpayer 2, taxpayer 3, and taxpayer 4 are not allowed to resell the credit since the credit can only be sold one-time.

(b) The postproduction film tax credit may be transferred before the tax return is filed by the postproduction company provided the postproduction film tax credit has been earned. Preapproval for the credit by itself does not qualify as earning the credit. The amount transferred cannot exceed the amount of the credit which will be claimed and not used on the income tax return of the postproduction company.

(c) The postproduction company must file Form IT-TRANS “Notice of Tax Credit Transfer” with both the Department of Economic Development and Department of Revenue within 30 days after each transfer or sale of the postproduction film tax credit. Form IT-TRANS must be submitted electronically to the Department of Revenue through the Georgia Tax Center or alternatively as provided in subparagraph (18)(c)1. of this regulation. The Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. If the postproduction company is a disregarded entity then Form IT-TRANS should be filed in the name of the owner of the disregarded entity but the Form IT-PFC should be in the name of the disregarded entity.

1. The web-based portal on the Georgia Tax Center. The postproduction company may provide selective information to a representative for the purpose of allowing the representative to submit Form IT-TRANS on their behalf on the Georgia Tax Center outside of a login. The provision of such information shall authorize the representative to submit such Form IT-TRANS. The representative must provide all information required by the web-based portal on the Georgia Tax

Center to submit Form IT-TRANS.

(d) The postproduction company must provide all required postproduction film tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the postproduction film tax credit being disallowed until the postproduction company complies with such requirements.

(e) The carryforward period of the postproduction film tax credit for the transferee will be the same as it was for the postproduction company. This credit may be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.26A from the end of the tax year in which the qualifying postproduction expenditures were incurred. For example: The postproduction company sells a postproduction film tax credit on September 15, 2019. This credit is based on qualifying expenditures from the calendar 2018 tax year and can be carried forward five years. The credit may be claimed by the transferee on the 2018, 2019, 2020, 2021, 2022, or 2023 return and the carryforward period for this credit will expire on December 31, 2023. This carryforward treatment applies regardless of whether it is being claimed by the postproduction company or the transferee.

(f) A transferee shall have only such rights to claim and use the postproduction film tax credit that were available to the postproduction company at the time of the transfer excluding the withholding tax benefit which is not available to the transferee. Thus, a transferee shall not have the right to subsequently transfer such credit since that right has been utilized by the transferor.

(19) How to Sell or Transfer the Tax Credit.

(a) Direct Sale. The postproduction company may sell or transfer the postproduction film tax credit directly to a Georgia taxpayer (or multiple Georgia taxpayers as provided in subparagraph (18)(a) of this regulation). A pass-through entity may make an election to sell or transfer the unused postproduction film tax credit earned in a taxable year at the entity level. If the pass-through entity makes the election to sell the postproduction film tax credit at the entity level, the credit does not pass through to the shareholders, members, or partners. In all cases, the effect of the sale of the credit on the income of the seller and buyer of the credit will be the same as provided in the Internal Revenue Code.

(b) Pass-Through Entity. The postproduction company may be structured as a pass-through entity. If a pass-through entity does not make an election to sell or transfer the tax credit at the entity level as provided in subparagraph (19)(a) of this regulation, the tax credit will pass through to the shareholders, partners or members of the entity based on their year ending profit/loss percentage. The shareholders, members, or partners may then sell their respective postproduction film tax credit to a Georgia taxpayer.

(c) Transferee Pass-Through Entity. The postproduction company, or its shareholders, members or partners, may sell or transfer the tax credit to a pass-through entity. The pass-through entity shall elect on behalf of its shareholders, members or partners which year the credit shall be passed through to its shareholders, members or partners (either its tax year in which the income tax year of the postproduction company, which claims the postproduction film tax credit ends; or during any later tax year before the carryforward period associated with the tax credit ends as provided in subparagraph (19)(d) of this regulation). If the pass-through entity has no income tax liability of its own, the pass-through entity may then pass the credit through to its shareholders, members, or partners based on the pass-through entity's year ending profit/loss percentage for such elected year. For example, if a calendar year partnership is buying the credit earned by a postproduction company in the calendar 2019 tax year and elects to use the credit for such year, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2019 tax year in which the credit was established. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the postproduction film tax credit.

(d) The credits are available for use by the transferee, provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected pursuant to O.C.G.A. § 48-2-35:

1. In the transferee's tax year in which the income tax year of the postproduction company, which claims the postproduction film tax credit ends; or

2. During any later tax year before the carryforward period associated with the tax credit ends.

(i) Example: A postproduction company reaches the \$500,000 in qualified postproduction expenditures in a taxable year, receives preapproval, and claims the postproduction film tax credit in calendar 2019 tax year. There is a five-year carryforward period associated with the credit. The

postproduction company sells the postproduction film tax credit to a calendar year Georgia taxpayer in calendar year 2020. The transferee Georgia taxpayer may claim the purchased postproduction film tax credit on either their 2019 return (transferee's tax year in which the income tax year of the postproduction company ends) or their 2020, 2021, 2022, 2023, or 2024 return (during any later tax year before the five-year carryforward period associated with the tax credit ends).

(ii) Example: A postproduction company reaches the \$500,000 base investment threshold and claims the postproduction film tax credit in its fiscal year end June 30, 2019. There is a five-year carryforward period associated with the credit. The postproduction company sells the postproduction film tax credit to a calendar year Georgia taxpayer in calendar year 2020. The transferee Georgia taxpayer may claim the purchased postproduction film tax credit on either their 2019 return (transferee's tax year in which the income tax year of the postproduction company ends) or their 2020, 2021, 2022, 2023, or 2024 return (during any later tax year before the five-year carryforward period associated with the tax credit ends).

(20) **Required Reporting.** For taxable years beginning on or after January 1, 2018, and before January 1, 2023, the postproduction company shall electronically report to the Department of Revenue through the Georgia Tax Center on Form IT-PC-RPT the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year. Such report shall be filed on the date the postproduction company files its Georgia income tax return. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours a week and that pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(a) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall report yearly to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each postproduction company. The first report shall be submitted by June 30, 2018, and each year thereafter by June 30.

(21) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after

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January 1, 2025. Taxable years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.26A.

560-7-8-.60 Qualified Education Donation Tax Credit

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of the tax credit under O.C.G.A. § 48-7-29.21.

(2) **Definitions.** As used in this regulation, the terms “qualified education donation” and “recipient” shall have the same meaning as in O.C.G.A. § 48-7-29.21.

(3) **Credit Amount.** The amount of qualified education donation tax credit allowed a taxpayer shall be as follows:

(a) For an individual taxpayer, the credit amount shall not exceed \$2,500, or the actual amount donated, whichever is less.

(b) For an individual taxpayer filing married filing separate, the credit amount shall not exceed \$2,500, or the actual amount donated, whichever is less.

(c) For individual taxpayers filing married filing joint, the credit amount shall not exceed \$5,000, or the actual amount donated, whichever is less.

(d) For an individual taxpayer who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter ‘S’ corporation, or a partner in a partnership, the credit is limited to the lesser of the actual amount donated or \$25,000 per tax year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter ‘S’ corporation, or partner in a partnership. In determining such Georgia income, the shareholder, partner, or member shall exclude any income that was subtracted on their Georgia return because the entity paid tax at the pass-through entity level in Georgia as provided in

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repealed on December 31, 2029.

(13) **Effective Date.** This regulation shall be applicable to years beginning on or after January 1, 2024. Years beginning before January 1, 2024 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2024 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.21.

560-7-8-.61 Musical Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-40.33.

(2) **Coordination of Agencies.** The Department of Economic Development is the state agency responsible for certifying which projects qualify for the tax credit under O.C.G.A. § 48-7-40.33.

(3) **Definitions.**

(a) As used in this regulation, the terms “musical or theatrical performance”, “production company”, “qualified production activities”, “qualified production expenditures”, “recorded musical performance”, “resident”, “spending threshold”, “state certified production”, and “total aggregate payroll” have the same meaning as in O.C.G.A. § 48-7-40.33.

(b) The term “production site” means:

1. For a musical or theatrical performance, the site or sites where the production is developed, prepared, planned, rehearsed, or performed.

2. For a recorded musical performance, the site or sites where the production is prepared, planned, or recorded.

(4) Qualified Production Expenditures. Qualified production expenditures include production expenditures incurred in this state on direct account of qualified production activities, including without limitation the following: set construction and operation; wardrobe, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures (excluding license fees) incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; total aggregate payroll; talent and producer fees; technical fees; crew fees; per diem costs paid to employees; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices; and payments to a loan-out company.

(a) Depreciation, amortization, or other expense on qualified production expenditures with a useful life of more than one year. The costs of qualified production expenditures with a useful life of more than one year are considered “other direct costs of the qualified production activities in accordance with generally accepted entertainment industry practices.” Such costs shall be included in the computation of the musical tax credit for the taxable year based upon the depreciation, amortization, or other expense included in the computation of Georgia taxable income of the production company for the applicable taxable year. Such depreciation, amortization, or other expense shall be prorated based upon the time the asset is used in qualified production activities in this state. Depreciation, amortization, or other expense on expenditures incurred before the production period shall not be included in the computation of the musical tax credit. In order to claim depreciation, amortization, or other expense, the qualified production expenditure for the asset that generated the depreciation, amortization, or other expense, must have been incurred in this state as provided in subparagraph (4)(b) of this regulation.

(b) Qualified production expenditures incurred in this state. In order to be considered to have been incurred in this state, the following rules shall apply:

1. Qualified production expenditures, which are attributable to the performance of services by individuals and companies directly at the production site in Georgia who were not employees of the production company, shall be attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation.

2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the production site (such as insurance, service fees paid to a payroll company including workers compensation if the service fees include such, editing and related services, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, etc.) will be allowed if the vendor is a Georgia vendor and will be attributed to Georgia if and only to the extent the service is rendered in Georgia. If the production company is unable to track the cost of services rendered in Georgia, then some other reasonable method which approximates the cost of services rendered in Georgia may be used to determine the amount attributable to Georgia but such approximation will be subject to adjustment by the Department. In the event the services are subcontracted to a company that would not otherwise qualify and/or such subcontracted company renders the services outside Georgia, the expenditure for such services shall not be considered to have been incurred in this state.

3. Purchases and rentals of property. In order to include qualified production expenditures for purchases and rentals of property, the property must have been used in Georgia and purchased or rented from a Georgia vendor. Purchase receipts, invoices, contracts, or other documentation shall be used to determine this.

4. Georgia Vendor. For purposes of this regulation, a Georgia vendor is a vendor that:

(i) Sells or rents property, which is regularly kept in their inventory, or provides a service not performed at the production site, which is the subject of the qualified production expenditure, in their ordinary course of business; and

(ii) Has a physical location in Georgia with at least one individual working at such location on a regular basis. Registering with the Georgia Secretary of State or appointing a registered agent in Georgia does not establish a physical location in Georgia.

However, a vendor that acts as a conduit to enable purchases and rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases and rentals.

(c) Salaries. Total aggregate payroll, as such term is used in this regulation, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employee's Form W-2 "Wage and Tax Statement". Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement". For purposes of this regulation, the term "employee" means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee. Guaranteed payments to partners do not qualify for the musical tax credit and are not included in total aggregate payroll. Except as otherwise provided in this paragraph, if the production company is unable to track the actual time spent by an employee in Georgia, the production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia but such approximation will be subject to adjustment by the Department. For all individuals who are paid a separate amount for production, the amount that is incurred in Georgia shall be based on the amount paid for such period and prorated based on the actual time spent in Georgia by the employee in such period. If the production company is unable to track the actual time spent by the individual in Georgia, the production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia for such period but such approximation will be subject to adjustment by the Department.

(d) Fringe Benefits. The following benefits are attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation:

1. SUI (state unemployment insurance);
2. FUI (federal unemployment insurance);
3. FICA (employer portion);
4. Pension and welfare if the amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);
5. Health insurance premiums if these amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

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(i) Other Fringe Benefits. The following fringe benefits are attributed to Georgia as follows:

1. Meal per diems, as set forth by United States General Services Administration, if incurred in Georgia; and

2. Hotel per diems, as set forth by United States General Services Administration, if incurred in Georgia.

(e) Direct account. A production company may only claim qualified production expenditures on direct account of a qualified production activity. In determining whether a production expenditure is on direct account of a qualified production activity, the Department of Revenue will consider the proximity of the expenditure to the activity as well as the causal relationship between the expenditure and the activity; and the applicable rules of the Department of Economic Development and any determination made by the Department of Economic Development regarding whether a qualified production expenditure is on direct account of a qualified production activity.

(5) **Credit Amount.** A production company that meets or exceeds \$500,000 in qualified production expenditures in a taxable year for a musical or theatrical performance; or \$250,000 in qualified production expenditures in a taxable year for a recorded musical performance which is incorporated into or synchronized with a movie, television, or interactive entertainment production; or \$100,000 in qualified production expenditures in a taxable year for any other recorded musical performance, as provided in O.C.G.A. § 48-7-40.33 and this regulation, shall be allowed a tax credit of 15 percent of the qualified production expenditures; and an additional 5 percent shall be allowed for qualified production expenditures incurred in a tier 1 or tier 2 county as designated by the Commissioner of Community Affairs under O.C.G.A. § 48-7-40.

(6) **Credit Cap for Production Companies and Affiliates.** In no event shall the aggregate amount of tax credits allowed under O.C.G.A § 48-7-40.33 for production companies and their affiliates which are production companies exceed the following amounts:

(a) For taxable years beginning on or after January 1, 2018 and before January 1, 2019, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies

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shall not exceed \$5 million. The maximum credit amount allowed for any production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable year;

(b) For taxable years beginning on or after January 1, 2019 and before January 1, 2020, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies shall not exceed \$10 million. The maximum credit amount allowed for any production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable year;

(c) For taxable years beginning on or after January 1, 2020 and before January 1, 2023, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies shall not exceed \$15 million per taxable year. The maximum credit amount allowed for any production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable years; and

(d) The musical tax credit shall not be available for taxable years beginning on or after January 1, 2023.

(7) **Preapproval.** Before requesting preapproval from the Department, the production company must apply for pre-certification from the Department of Economic Development to ensure that the project meets the requirements of O.C.G.A. § 48-7-40.33. Any production company seeking preapproval to claim tax credits under paragraphs (6) of this regulation, must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this paragraph.

(a) **Application.** A production company seeking preapproval to claim the tax credits under paragraph (6) of this regulation must electronically submit Form IT-MC-AP and their pre-certification from the Georgia Department of Economic Development through the Georgia Tax Center. A production company may request preapproval from the Department before meeting the requirements of the musical tax credit. Such production company must estimate their credit amounts on Form IT-MC-AP. The amount of tax credit claimed by the production company on the production company's applicable Georgia income tax return must be based on the actual musical tax credit earned under O.C.G.A. § 48-7-40.33 and this regulation and cannot exceed the amount preapproved. If the production company is preapproved for an amount that exceeds the amount that is calculated using the actual numbers when the return is filed, the excess preapproved amount

cannot be claimed by the production company nor shall such excess preapproved amount be assigned to any other taxpayer or added to the credit cap under paragraph (6) of this regulation. If the production company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity.

(b) Notification. The Department will notify each production company of the tax credits preapproved or denied to such production company.

(c) Allocation of Tax Credit. The Commissioner shall allow the tax credits on a first-come, first-served basis. The date the Form IT-MC-AP is electronically submitted shall be used to determine such first-come, first-served basis.

(d) Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in paragraph (6) of this regulation, then the tax credits shall be allocated among the production companies who submitted Form IT-MC-AP on the day the maximum aggregate limit was exceeded on a pro rata basis based upon amounts otherwise allowed under O.C.G.A. § 48-7-40.33, and this regulation. Only credit amounts on applications received on the day the aggregate credit cap was exceeded will be allocated on a pro rata basis.

(e) Once the credit cap is reached for a taxable year, production companies who meet the requirements of the musical tax credit during such taxable year shall no longer be eligible for a credit under O.C.G.A. § 48-7-40.33. If any Form IT-MC-AP is received after the taxable year preapproval limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(f) In the event it is determined that the production company has not met all the requirements of O.C.G.A. § 48-7-40.33 and this regulation, then the amount of credits shall not be preapproved or the preapproved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(8) Musical or Theatrical Performance or Recorded Musical Performance with Qualified Production Expenditures in More Than One Year. A musical or theatrical performance or recorded musical performance which occurs over two or more years shall be considered a single project. The production company should request preapproval for the year the applicable spending threshold is met, and if necessary must request preapproval for any later year with qualified production expenditures.

(a) Example 1: A production company has \$700,000 in qualified production expenditures during two years (they spend \$300,000 in year 1 and \$400,000 in year 2) producing one musical or theatrical performance. The production company may aggregate their qualified production expenditures over the two years for this single project to achieve the \$500,000 spending threshold. The production company must request preapproval in year 2 for \$700,000 (the year the \$500,000 spending threshold is met), and if preapproved, claim the credit on their applicable year 2 Georgia income tax return.

(b) Example 2: A production company has \$800,000 in qualified production expenditures during two years (they spend \$600,000 in year 1 and \$200,000 in year 2) producing one musical or theatrical performance. The production company may aggregate their qualified production expenditures over the two years for this single project to achieve the \$500,000 spending threshold. The production company must request preapproval in year 1 for \$600,000 (the year the \$500,000 spending threshold is met) and in year 2 the production company must request preapproval for \$200,000 of production expenditures (the later year). If preapproved for year 1, the production company must claim the \$600,000 on their applicable year 1 Georgia income tax return and if preapproved for year 2 the production company must claim \$200,000 on their applicable year 2 Georgia income tax return.

(9) **Qualified Production Expenditures Not Eligible for the Musical Tax Credit.** Any qualified production expenditures for which a production company claims the tax credit under O.C.G.A. § 48-7-40.26 are not eligible for the musical tax credit under O.C.G.A. § 48-7-40.33 and this regulation.

(10) **Claiming the Musical Tax Credit.** A production company claiming tax credits under paragraph (6) of this regulation must attach Form IT-MC, and their final certification from the Georgia Department of Economic Development to its Georgia income tax return for each tax year in which the credit is claimed.

(a) **Withholding Tax.** The production company may claim any excess musical tax credit against its withholding tax liability or the withholding tax liability of its payroll service providers provided such withholding tax liability is with respect to the employees of the production company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(a)3. of this regulation. The withholding tax benefit may only be applied against the withholding tax account used by the production company or its payroll service provider for payroll purposes. In the event the production company is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company or against the withholding tax liability of its payroll service providers provided such withholding tax liability is attributable to wages paid by its payroll service provider with respect to the individuals providing services to the single member limited liability company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(a)3. of this regulation. Any production company that qualifies to take all or a part of the musical tax credit against withholding tax otherwise due the Department of Revenue, must notify the Commissioner, in the manner specified in subparagraph (10)(a)1., below, for any tax year for which they are making an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such company. When this election is made, the excess musical tax credit will not pass through to the shareholders, partners, or members of the production company if the production company is a pass-through entity.

1. **Notice of Intent.** To claim any excess musical tax credit not used on the income tax return against the production company's withholding tax liability, the production company must file

Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period after the due date of the Georgia income tax return (including extensions). Failure to file this form as provided in this subparagraph will result in disallowance of the withholding tax benefit. Such irrevocable election may only be made one time with respect to each tax year for which the credit is earned for such tax year, for all or part of the excess tax credit remaining at the time of the election. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (10)(a)1. of this regulation is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the production company stating the musical tax credit amount which may be applied against withholding and when the production company or its payroll service provider may begin to claim the musical tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments made by the production company or its payroll service provider.

(b) Use of Other Tax Credits. Production companies claiming the musical tax credit may not claim the job tax credit, headquarters tax credit, or quality jobs tax credit for employees whose wages are used to calculate the musical tax credit.

(c) Assignment of Credit to Affiliates. Once the production company establishes the amount of the musical tax credit by filing the tax return for the taxable year in which the credit was earned, the credit may then be assigned to the production company's affiliates under the provisions of O.C.G.A. § 48-7-42. When a musical tax credit is assigned to an affiliated entity, the affiliated entity may apply the credit solely against its own income tax liability. The affiliated entity may not claim any excess musical tax credit against its withholding tax. Any unused credit may be carried forward by such affiliated entity until the credit is used or it expires, whichever occurs first.

(11) **Carryforward.** Any credit that is claimed but not used in a taxable year may be carried forward for five years from the close of the taxable year in which the qualified production

expenditures were made and the production company established the amount of the musical tax credit for that taxable year.

(a) Musical tax credits may not be carried back and applied against a prior year's income tax liability.

(12) **Audits.** Any Department of Revenue audit triggered by a production company's use of a musical tax credit will require the production company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the production company that the audit is a musical tax credit audit and thus subject to this clause prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this provision.

(13) **Pass-Through Entities.** When a production company generating a musical tax credit is a pass-through entity, and has no income tax liability of its own, the musical tax credit will pass to its members, shareholders, or partners based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the production company that incurred the qualifying production expenditures to establish the amount of the musical tax credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess musical tax credit against their withholding tax liabilities or against the withholding tax liabilities of their payroll service providers. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2019. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2019 tax year.

(14) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, 2025. Taxable years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.33.